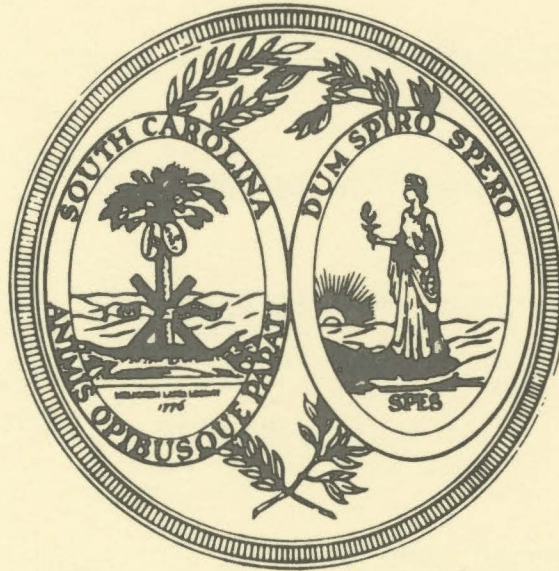


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South Carolina General Assembly



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STATE DOCUMENTS

Legislative Audit Council



The State of South Carolina
General Assembly
Legislative Audit Council
Sunset Review of:
Masseurs or Masseuses Program
Polygraph Examiners Program
Private Detectives and Private
Security Agencies Program
Certification Program for
Public Librarians
Board of Registration for
Foresters
August 10, 1984

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF:

MASSEURS OR MASSEUSES PROGRAM

POLYGRAPH EXAMINERS PROGRAM

PRIVATE DETECTIVES AND PRIVATE SECURITY AGENCIES PROGRAM

CERTIFICATION PROGRAM FOR PUBLIC LIBRARIANS

BOARD OF REGISTRATION FOR FORESTERS

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REPORT INTRODUCTION

In July 1978, the General Assembly passed Act 608, the Sunset Act. This Act abolishes specific boards, programs, and commissions on predetermined dates unless the agency demonstrates a public need to justify its continued existence. In passing the Law, the Legislature's greatest concern was whether the regulation provided by these agencies was needed to protect the public interest and, if so, how well the agencies were performing this function. This report contains the reviews of four programs and one board scheduled to terminate on June 30, 1985:

Masseurs or Masseuses Program
Polygraph Examiners Program
Private Detectives and Private Security
Agencies Program
Certification Program for Public Librarians
Board of Registration for Foresters

The first three programs listed above are administered by the State Law Enforcement Division.

The Sunset Law made the Legislative Audit Council responsible for evaluating the performance of these agencies scheduled for termination. A systematic review is provided by the Act so that the Legislature might be in a, "better position to evaluate the need for their continuation, reorganization or termination." The Act requires that the Audit Council, as a minimum, address the following eight issues:

- (1) The amount of the increase or reduction of costs of goods and services caused by the administering of the programs or functions of the agency under review;

- (2) Economic, fiscal and other impacts that would occur in the absence of the administering of the programs or functions of the agency under review;
- (3) The overall cost, including manpower, of the agency under review;
- (4) The efficiency of the administration of the programs or functions of the agency under review;
- (5) The extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates;
- (6) The extent to which the agency duplicates the services, functions and programs administered by any other State, federal or other agency or entity;
- (7) The efficiency with which formal public complaints filed with the agency concerning persons or industries subject to regulation and administration of the agency under review have been processed; and,
- (8) The extent to which the agency under review has complied with all applicable State, federal and local statutes.

This criteria provided guidelines and measures by which an agency's performance can be judged. In its review, the Audit Council studied the fiscal and management practices of each agency, program or board. All applicable policies, procedures and State regulations were reviewed. Files, memos, minutes of meetings and records were examined and complaints and examination data analyzed. In addition, the Audit Council surveyed Board members and interested industry associations and interviewed the Boards' staffs.

Review of the regulatory duties and functions of the Polygraph Examiners program and Private Detective and Private Security Agencies program indicate that these two programs fulfill a public need through the regulation of their industries. The Audit Council recommends that the authorities of each of these programs be continued. The Council has also determined that the Certification Program for Public Librarians should be continued. However, inclusion of this program in the schedule

of sunset reviews is questionable, since it does not exercise a regulatory function.

The Legislative Audit Council has determined that the Masseurs or Masseuses program and the Board of Registration for Foresters do not meet the criteria set out in the Sunset Act to justify continued existence.

This report is the first step in the Sunset process. Each agency was invited to respond in writing to its audit report and their comments follow the report. In addition, each agency is given the opportunity to testify before the State Reorganization Commission. Following this process, the General Assembly will decide whether to reestablish or terminate these programs.

MASSEURS/MASSEUSES LICENSING PROGRAM

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INTRODUCTION

After reviewing its operations and laws, the Legislative Audit Council concludes that the Masseurs/Masseuses program should be terminated in accordance with Act 608 of 1978. The Audit Council found no evidence of a threat to the public health, safety and/or welfare from incompetently administered massage. In addition, the use of the Masseurs/Masseuses program to control prostitution in massage parlors is not necessary for two reasons. South Carolina has statutes prohibiting prostitution. Also, localities can pass and enforce ordinances regulating massage parlors.

BACKGROUND AND HISTORY

State licensing of masseurs and masseuses began in South Carolina with passage of Act 281 in 1975. Section 40-29-50 of the South Carolina Code of Laws requires that the State Law Enforcement Division (SLED) conduct a background investigation of all individuals applying for licensure as a masseur/masseuse. However, the local governing body where the business is to operate issues the license.

The Regulatory Department of SLED conducts the background investigation of applicants for a masseur/masseuse license. In addition, the Regulatory Department also administers the state statutes governing private detectives/security guards and pistols and other firearms. Since its creation in 1972, the Regulatory Department has grown from a staff of two to a staff of ten in FY 82-83.

Section 40-29-20 defines a masseur/masseuse as a "...person who applies manual or mechanical massage or similar treatment to the human body trunk or limbs..." The requirements for licensure, specified by Section 40-29-50, are proof of good moral character and a health certificate from a medical doctor. Section 40-29-170 exempts individuals working at YMCA's, YWCA's and individuals employed by hospitals, sanitariums, nursing homes and medical clinics. There were three individuals licensed under the Act, as of FY 83-84.

South Carolina and Florida are the only southeastern states which require licensure of masseurs/masseuses. State laws in Tennessee and Mississippi give counties the option to regulate masseurs/masseuses. Licensure is not required in Alabama, Georgia, Kentucky, North Carolina and Virginia.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Masseurs, Masseuses and the Like Act does not set prices to be charged by licensees for their services, so it has no direct influence on consumer prices. The three licensed masseuses in the State told the Audit Council that their prices are independent of their licensing fees. An increase or reduction in the licensing fee reportedly would not cause them to change their fee to the public. However, fees charged for licensing are high as compared with the licensing fees charged other professions. In addition, certain provisions of the Act reportedly restrict the licensees' ability to earn a living. These problems are discussed in the findings below.

Fee Structure Needs Review

The licensing fee for the Masseurs/Masseuses program is higher than for any profession listed in the South Carolina Occupational and Professional Licensing Board's (OPLB) Annual Report for FY 81-82. The initial license fee is \$500 and the yearly renewal fee is \$250. The fees are set by statute and are not subject to the Administrative Procedures Act. The nine professions in South Carolina with the highest initial

licensing fees, according to the OPLB Annual Report for FY 81-82, are presented in Table 1.

TABLE 1
PROFESSIONS WITH THE HIGHEST INITIAL LICENSING FEES
IN SOUTH CAROLINA

<u>Type of License</u>	<u>Initial Licensing Fee</u>	<u>Yearly Renewal</u>
1. Masseur/Masseuse	\$500	\$250
2. Physician	300	60
3. Architect	210	25
4. Dental Specialist	200	50
5. General Dentistry	200	40
6. Dental Technician	200	30
7. Podiatrist	150	25
8. Nursing Home Administrator	130	100
9. Vacation Timeshare Salesman	130	50
10. Chiropractor	125	125

Source: South Carolina Occupational and Professional Licensing Board
Annual Report FY 81-82 and Masseur, Masseuses and the
Like Act.

The licensing fee in Florida, the only other southeastern state requiring licensure, is \$25 annually. The licensing fees in the eight states where the fees are set by statute range from \$20 to \$50 for an initial license and \$5 to \$25 for a renewal.

High licensing fees can result in hardship for licensees and higher consumer prices.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE MASSEURS/MASSEUSES PROGRAM IT SHOULD CONSIDER AMENDING SECTION 40-29-40 TO LOWER THE LICENSING FEE FOR MASSEURS AND MASSEUSES AND ALLOW CHANGES IN FEES TO BE SET BY REGULATION.

Provisions of Act Restrict Licensees' Ability to Earn A Living

The provisions of the Masseurs, Masseuses and the Like Act which prohibit opposite sex massage and restrict business hours are reportedly limiting licensees' ability to earn a living. The three current licensees all work at hotels. The licensees stated to the Audit Council that because hotels do a great deal of weekend business, the provisions prohibiting them from working on Sundays and before 10:00 a.m. and the restriction on opposite sex massage have limited their ability to earn a living.

Section 40-29-100 of the South Carolina Code of Laws states that no masseur/masseuse may operate "...except within and between the hours of 10:00 a.m. and 10:00 p.m., Monday through Saturday." Section 40-29-110 states "It shall be unlawful for any person holding a license...to treat a person of the opposite sex, except upon signed order of a physician..." According to South Carolina Department of Labor officials, no State laws regulate hours of any other profession (except Sunday hours of operation and child labor). Florida, the only other southeastern state that requires licensure, does not prohibit opposite sex massage or restrict hours of operation.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE MASSEURS/MASSEUSES PROGRAM IT SHOULD CONSIDER AMENDING SECTIONS 40-29-100 AND 40-29-110 TO ALLOW OPPOSITE SEX MASSAGE AND TO ALLOW BUSINESSES TO OPERATE ON SUNDAY AND BEFORE 10:00 A.M.

- (2) DETERMINE THE ECONOMIC, FISCAL, AND OTHER IMPACTS THAT WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS UNDER REVIEW.

The Audit Council review of the Masseurs/Masseuses program revealed no threat to the public health, safety and/or welfare from incompetently administered massage. According to State and local law enforcement officials, the Masseurs/Masseuses program is designed to help control prostitution in massage parlors. South Carolina has legislation prohibiting prostitution, primarily enforced by local police. The Audit Council concludes that the Masseurs/Masseuses program should be terminated and regulation left to local authorities.

Termination could lead, however, to a recurrence of the practice of sexually oriented massage by masseuses on male clients and vice versa. The Audit Council recommends that the State laws outlawing prostitution be amended to prohibit this practice. The following findings explain this in more detail.

Program Not Needed to Protect Public From Incompetent Masseurs

In interviews with the Audit Council, none of the three licensees knew of any documented cases where physical harm had resulted from incompetently administered massage. In addition, while stating that physical harm could result from incompetently administered massage, the American Massage Therapists Association (AMTA) could provide no documented cases of physical injury. An Audit Council review of program files maintained since 1975 revealed no complaints relating to physical injury.

Nationally, 13 states have laws regulating the practice of massage. Six states have conducted sunset reviews of their programs regulating masseurs/masseuses and three were sunset since 1977. In four of the six no threat was found to the public health, safety and welfare from incompetently administered massage. The Florida report was not available and the Nebraska report had as its principle concern prostitution.

Program Used to Control Prostitution

According to State and local law enforcement officials, the Masseurs/Masseuses program is designed to help control prostitution in massage parlors. In addition, certain provisions of the Masseurs, Masseuses and the Like Act imply that a major purpose of licensing masseurs/masseuses is to control prostitution. There are no educational, training or experience requirements for licensure. The restrictions placed on business hours, the prohibition of opposite sex massage, the requirement that all masseurs/masseuses keep records of persons receiving treatment, and the enforcement of the law by the State Law Enforcement Division (SLED) suggest that the licensing law is designed to control prostitution.

Both State and local law enforcement officials expressed a need for a State licensing law in order to control prostitution, when surveyed by the Audit Council. However, when asked if they had used the Masseurs, Masseuses and the Like Act to control prostitution in massage parlors, these officials stated that they had controlled it through prostitution laws. In addition, both State and local officials indicated that prostitution in South Carolina is controlled mainly by the local police authorities.

Sections 16-15-90 through 16-15-110 of the South Carolina Code of Laws make prostitution illegal and provide penalties for violation of the law of up to a \$1,000 fine and/or up to three years in prison. In addition, Section 15-43-10 et. seq. (Abatement of Nuisances) provides that establishments used for prostitution shall be declared a public nuisance and provides that, if convicted, all personal property of the defendant used in conducting the nuisance shall be sold and the building where the nuisance was located shall be closed for up to one year.

In addition to State laws covering prostitution and the abatement of nuisances, municipalities and counties may pass local ordinances regulating massage parlors as long as they are not in conflict with the Masseurs, Masseuses and the Like Act. Counties, however, cannot provide criminal penalties to enforce the ordinance, but must seek injunctive relief.

In the absence of the Act, municipalities could pass their own ordinances regulating massage parlors. A question exists as to whether counties can pass ordinances regulating massage in absence of the Act. The Audit Council requested an opinion from the Attorney General's Office as to whether counties could pass ordinances regulating massage if Section 40-29-10 et. seq. were repealed. Legal Counsel advised "...we also believe such authority to regulate these establishments presently exists under the Home Rule Act; however, since this question

is not free from doubt, legislative clarification is probably advisable," (see Appendix 1).

Sunset reviews of programs regulating masseurs/masseuses have been conducted in six states (Connecticut, Florida, Hawaii, Montana, Nebraska and New Mexico). In five, the programs were either terminated or recommended for termination. In Florida, where approximately 2,400 masseurs/masseuses are licensed, the law was recommended for termination in 1977. However, the law was not terminated due to law enforcement concerns over prostitution. Programs were terminated in Connecticut and Montana without a resulting problem with prostitution. New Mexico has had only minimal problems with prostitution. Although sunset was recommended in Hawaii, the program was not terminated; the program had led to the arrest of 263 individuals on prostitution charges in the past six years. (In South Carolina, one business has been charged with violating the act since 1978.) There was no recommendation for either continuation or termination in Nebraska.

Most (37) states do not have statewide licensing programs for masseurs/masseuses. Florida is the only other southeastern state to require licensure of masseurs/masseuses. Tennessee and Mississippi have state laws which leave the regulation of masseurs and masseuses up to the counties.

The use of a statewide licensing program for masseurs/masseuses in order to help control prostitution when statutes prohibiting prostitution exist may be unnecessary.

RECOMMENDATIONS

IN ACCORDANCE WITH ACT 608 OF 1978, THE
GENERAL ASSEMBLY SHOULD CONSIDER TERMINATING

THE MASSEURS/MASSEUSES PROGRAM AS ADMINISTERED
BY SLED.

THE GENERAL ASSEMBLY SHOULD CONSIDER
CLARIFYING SECTION 4-9-10 ET. SEQ. AS TO THE
COUNTY'S EXERCISE OF POLICE POWER AND THE
REGULATION OF MASSAGE PARLORS.

No Specific Statute Prohibits Sexually Oriented Massage

Neither the Masseurs, Masseuses or the Like Act (Section 40-29-10 et. seq. of the South Carolina Code of Laws) nor the statutes on Offenses Against Morality and Decency (Section 16-15-10 et. seq.) directly prohibit sexually oriented massage. The provision in the Masseurs, Masseuses and the Like Act which prohibits opposite sex massage prevents sexually oriented massage from being practiced by masseuses on male clients, or vice versa. However, prohibiting opposite sex massage has also reportedly impaired the three licensed masseuses' ability to earn a living (see p. 10).

Section 16-15-90 prohibits, but does not define, prostitution. Section 16-15-90(4) states it shall be unlawful to "Expose indecently the private person for the purpose of prostitution or other indecency" but does not specifically prohibit sexually oriented massage.

Without a provision against sexually oriented massage, individuals providing massage services may be able to offer sexually oriented massage without clearly violating the State prostitution statutes. Should the General Assembly eliminate the provision against opposite sex massage

(see p. 10) or terminate the Masseurs/Masseuses program, the State prostitution laws may need to be amended to prohibit the practice of sexually oriented massage. A statute such as the one passed in Georgia in 1975, which prohibits "masturbation for hire," should be considered (see Appendix 2).

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING SECTION 16-15-90 OF THE SOUTH
CAROLINA CODE OF LAWS TO INCLUDE A
PROHIBITION AGAINST SEXUALLY ORIENTED
MESSAGE.

- (3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER, OF
THE AGENCY UNDER REVIEW.

The State Law Enforcement Division (SLED) does not maintain an operating budget for the Masseurs/Masseuses program. SLED officials stated to the Audit Council that there were no expenditures or revenues for FY 80-81 and FY 81-82. For FY 82-83, SLED officials estimated that one-half of one percent (\$985) of the total Regulatory Department expenditures was used to administer the Masseurs/ Masseuses program. In addition, three other SLED departments provided support to the program: Administration, General Law Enforcement, and Criminal Records. Approximately \$465 of the estimated total cost (\$1,450) of administering the program was borne by these three departments.

Revenue for the Masseurs/Masseuses program was \$1,500 in FY 82-83. The revenue and estimated cost for FY 80-81 through FY 82-83 is provided in Appendix 3. A schedule of fees is provided in Appendix 4.

For FY 82-83 the Regulatory Department had personnel service expenditures for ten classified positions: a supervisor, five agents, three data clerks, and a staff assistant. An Audit Council survey of the four background investigations conducted from January 1983 to February 1984 showed that four General Law Enforcement agents had performed work for the Regulatory Department. According to SLED officials, some General Law Enforcement agents conduct background investigations for the Regulatory Department when their location is convenient to the applicant's county or when Regulatory Department agents are working on another assignment.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council reviewed the operation of the Masseur/Masseuses program and has noted three problems which may affect its efficiency. The qualifications for licensure are vague, the inspection system needs improvement and requiring two health certificates is unnecessary. These problems are discussed below.

Qualifications for Licensure Vague

The qualifications required to become a licensed masseur/masseuse in South Carolina do not ensure minimum competency. The qualifications

are proof of good moral character and a health certificate. Applicants are not required to pass an examination or show proof of education, training or previous experience.

The American Massage Therapists Association (AMTA) model law requires passage of an examination and a diploma from a recognized school of massage. Florida requires passage of an examination and completion of a course of study at a state-approved massage school or 12 months of work as an apprentice prior to licensure. The 11 other states which license masseurs/masseuses require either passage of an examination, a diploma from an approved school of massage, completion of an apprenticeship program or a combination of the above prior to licensure. Regarding licensure generally, a 1978 Council of State Governments report states "...completion of an approved training program and certain experience requirements are usually reasonable requirements."

A major purpose of State licensure is to ensure minimum competency of those practicing the profession. Qualifications which are vague serve no purpose in protecting the public health, safety and welfare.

RECOMMENDATION

SHOULD THE GENERAL ASSEMBLY CHOOSE TO
REESTABLISH THE MASSEURS/MASSEUSES PROGRAM
IT SHOULD CONSIDER AMENDING SECTION 40-29-50
TO REQUIRE A DIPLOMA FROM AN ACCREDITED
SCHOOL OF MASSAGE OR ONE YEAR PREVIOUS
EXPERIENCE AS A MASSEUR/MASSEUSE.

Inspection System Needs Improvement

The Masseurs/Masseuses program has not maintained records on inspections conducted by program staff. According to State Law Enforcement Division (SLED) officials, one inspection was conducted in FY 82-83. However, SLED officials could provide no documentation of the inspection. In addition, there are no policies, procedures or schedules for conducting inspections.

Section 40-29-90 of the South Carolina Code of Laws states "It shall be the duty of the division to inspect periodically the premises licensed under this chapter..."

Without a recordkeeping system, or policies and procedures for conducting inspections, the usefulness of inspections in protecting the public health, safety and welfare is questionable.

RECOMMENDATIONS

SHOULD THE MASSEURS/MASSEUSES PROGRAM BE
REESTABLISHED SLED SHOULD DEVELOP POLICIES
AND PROCEDURES FOR INSPECTION OF LICENSEES.

INSPECTION RECORDS SHOULD BE MAINTAINED.
THESE RECORDS SHOULD INCLUDE THE INSPECTION
DATE, LICENSEE INSPECTED, PROBLEMS FOUND,
DATE OF RESOLUTION, FOLLOW-UP AND SIGNATURE
OF SLED STAFF.

Duplicate Health Certificates Unnecessary

An Audit Council survey of the three licensees' files revealed no evidence of county health department certificates as required by Section 40-29-140 of the South Carolina Code of Laws. Section 40-29-140 requires that all masseurs/masseuses obtain a health certificate from the county health department.

State Law Enforcement Division (SLED) officials stated to the Audit Council that they did not comply with Section 40-29-140 because Section 40-29-50 requires a health certificate from a medical doctor prior to licensure and SLED officials felt that one health certificate was adequate. All three licensees did have health certificates from a medical doctor attached to their initial applications.

Requiring two health certificates at the time of initial licensure results in unnecessary expense for the applicant and unnecessary administrative work for the Regulatory Department of SLED.

RECOMMENDATION

SHOULD THE GENERAL ASSEMBLY CHOOSE TO
REESTABLISH THE MASSEURS/MASSEUSES PROGRAM,
IT SHOULD CONSIDER AMENDING SECTIONS 40-29-50
AND 40-29-140 TO REQUIRE ALL PERSONS ADMINISTERING
MASSAGE TO OBTAIN A HEALTH CERTIFICATE
FROM EITHER A MEDICAL DOCTOR OR THE COUNTY
HEALTH DEPARTMENT PRIOR TO INITIAL LICENSURE.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

Requirement for Local Review Needed

Masseurs/Masseuses in South Carolina are regulated by the Regulatory Department of the State Law Enforcement Division (SLED) and the local government where the business is to operate. The Regulatory Department has no record of any complaints within the past five years (see p. 23). In addition, there is no listing in the State or public telephone directories for the program and no rules or regulations have been promulgated since passage of the Administrative Procedures (A.P.) Act in 1977. The A.P. Act requires that notice of a public hearing be published in the State Register if agencies plan to add, amend or repeal a rule or regulation.

The Regulatory Department of SLED conducts the background investigation for all license applicants. After completing the background investigation the Regulatory Department sends the application, along with its recommendation to issue or deny the license, to the "...local governing body..." where the business is to operate. This body may then issue or deny the license but it cannot issue a license unless the Regulatory Department recommends it.

The three current licensees were issued licenses by the Beaufort County Council. The County Council placed the license issue on the County Council meeting agenda. This meeting was open to the public. In addition, a copy of the agenda was given to the press prior to the County Council meeting.

The creation of a board or advisory council is not practical due to the limited number (3) of licensees. However, while the three current licensees' applications were brought before County Council in a public meeting, the Masseurs, Masseuses and the Like Act does not require that this be done.

RECOMMENDATIONS

SHOULD THE GENERAL ASSEMBLY CHOOSE TO REESTABLISH THE MASSEURS/MASSEUSES PROGRAM IT SHOULD CONSIDER AMENDING SECTION 40-29-50 TO REQUIRE THAT THE COUNTY OR CITY COUNCIL WHICH HAS JURISDICTION OVER THE LOCATION WHERE THE BUSINESS IS TO OPERATE SHOULD CONSIDER THE APPLICATION FOR A MASSEUR/MASSEUSE LICENSE IN A COUNCIL MEETING OPEN TO THE PUBLIC.

THE LICENSING OF MASSEURS AND MASSEUSES SHOULD BE REFLECTED IN THE REGULATORY DEPARTMENT'S ADDRESS AND PHONE LISTINGS IN THE PUBLIC AND STATE TELEPHONE DIRECTORIES.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS, AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR LOCAL AGENCY.

The Masseurs/Masseuses program does not duplicate the services, functions or programs administered by any federal agency. However, the law may be duplicating the State statutes covering prostitution (see p. 12).

In addition to the powers given local governments to regulate masseurs/masseuses under the Masseurs/Masseuses program, municipalities may also pass local ordinances regulating the operation of masseurs/ masseuses or massage parlors. An Audit Council survey of five South Carolina cities (Charleston, Columbia, Florence, Greenville and Spartanburg) revealed that four (all but Spartanburg) have local ordinances regulating masseurs/masseuses or massage parlors. A question exists, however, regarding the counties' ability to regulate massage parlors (see p. 13).

- (7) DETERMINE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Audit Council reviewed the central complaint file maintained for the Regulatory Department since August 1983. For the period August 1983 through November 1983 the Audit Council found no complaints against masseurs or masseuses. The Regulatory Department supervisor told the Audit Council that no complaints have been received since April 1981. In addition, an Audit Council survey of licensee files revealed no complaints within the past five years.

The Regulatory Department has no central complaint log providing documentation of case progress for the Masseurs/Masseuses program. There are no written policies and procedures for the assignment, investigation and resolution of complaints.

RECOMMENDATION

SHOULD THE MASSEURS/MASSEUSES PROGRAM BE REESTABLISHED THE REGULATORY SUPERVISOR SHOULD DEVELOP WRITTEN POLICIES AND PROCEDURES TO HANDLE COMPLAINTS. A CENTRAL COMPLAINT LOG SHOULD BE ESTABLISHED. AREAS THAT SHOULD BE ADDRESSED IN THE LOG ARE COMPLAINANT, NATURE OF COMPLAINT, DATE OF COMPLAINT AND MEANS OF CONTACT, ACTION TAKEN AND FOLLOW-UP. COMPLAINANTS SHOULD BE FORMALLY APPRISED OF CASE RESOLUTION.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL OR LOCAL STATUTES AND REGULATIONS.

The State Law Enforcement Division (SLED) has complied with all applicable federal and local statutes and regulations. However, Section 40-29-30 of the South Carolina Code of Laws may require licensure of physical fitness establishments. This problem is discussed in the finding below.

Law May Require Licensure of Physical Fitness Establishments

Physical fitness establishments which use "Jacuzzis," steam baths, whirlpools and hot tubs have not been licensed by SLED under the Masseurs/Masseuses program. This may be a violation of Section 40-29-30 of the South Carolina Code of Laws.

The Masseurs, Masseuses and the Like Act requires licensure of all persons engaged in the "...businesses, trade or professions commonly known as massage parlors, health salons, physical culture studios, clubs or establishments...by whatever name designated, wherein physical culture, massage, hydrotherapy or other physical treatment of the human body is carried on or practiced." [Emphasis Added]

The Audit Council requested an opinion from the Attorney General's Office which asked if physical fitness establishments were required to be licensed under the Act. Legal counsel advised that the statute appears ambiguous and that "the General Assembly did not intend 40-29-10 et.seq. ...to apply to health spas where massage or other similar treatment of the human body is not carried on or practiced. Since, however, the answer to your question is unclear...legislative clarification is probably advisable."

Legislative intent may not be effectively implemented when statutory language is unclear.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE MASSEURS/MASSEUSES PROGRAM IT SHOULD CONSIDER CLARIFYING INDIVIDUALS OR ESTABLISHMENTS REQUIRED TO BE LICENSED UNDER THE PROGRAM.

APPENDICES

The State of South Carolina



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June 11, 1984

George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

You have asked our advice concerning § 40-29-10 et seq. which provides for the regulation of massage parlors and the licensing of masseurs and masseuses in this State. Specifically, you have asked about the power of counties and municipalities to regulate massage parlors, assuming first the nonexistence of § 40-29-10 et seq., and then its existence.

Section 40-29-10 et seq. was recently addressed in considerable detail in my letter to you, dated May 25, 1984. Therein, it was noted the following:

Section 40-29-10 et seq. represents the codification of Act No. 281 of 1975, entitled "An Act to Regulate Massage Parlors, Health Salons, Physical Culture Studios, Clubs or Establishments, and Similar Establishments, With Exceptions, And to Provide A Penalty." Generally, the Act provides for the licensing of those engaged in the

businesses, trade or professions commonly known as massage parlors, health salons, physical culture studios, clubs or establishments by whatever name designated, wherein physical culture, massage, hydrotherapy or other physical treatment of the human body is carried on or practiced.

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Section 40-29-30. The statute defines a "masseur" and "masseuse" (§ 40-29-20) and further provides that the South Carolina State Law Enforcement Division (SLED) shall receive applications for licensure. By the statute, applicants are required to provide written recommendations showing proof of good moral character, as well as a health certificate from a medical doctor. Also required is a license fee of five hundred dollars and an annual renewal fee of two hundred and fifty dollars. Upon the completion of its investigation, SLED is required to forward the application to the governing body of the appropriate municipality or county, together with its own recommendation "to issue or refuse to issue a license." See, §§ 40-29-30 through -50.

The Act further empowers persons licensed under the Act to train "masseurs and masseuses under his supervision in his studio or establishment" under certain conditions (§ 40-29-70). It also requires licensed persons to file with SLED the names of all employees, their home addresses, home telephone numbers and places of employment (§ 40-29-70) and keep records concerning persons "treated" at his or her establishment (§ 40-29-80). The Act further requires SLED periodically to inspect premises licensed thereunder and for good cause to revoke the license upon hearing (§ 40-29-90). Section 40-29-100 prohibits an establishment licensed under the Act to operate at certain times (Sundays and certain A.M. hours). Section 40-29-110 forbids licensed persons "to treat a person of the opposite sex" except in certain circumstances. And § 40-29-120 makes it unlawful for "persons under the age of eighteen to patronize any massage parlor or similar establishment licensed thereunder unless such person carries with him at the time of such patronage, a written order directing the treatment to be given signed by a regularly licensed physician."

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Addressing first your question as to whether municipalities and counties could regulate massage parlors, assuming § 40-29-10 et seq. were not in existence, we believe there is little doubt that municipalities could regulate such establishments pursuant to the general police powers given them under state law. Section 5-7-30 of the Code of Laws of South Carolina (1976) broadly empowers municipalities to

enact regulations, resolutions and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of such powers in relation to roads, streets, markets, law enforcement, health and order in such municipalities or respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities or for preserving health, peace, order and good government therein... .

This section purports to give municipalities general police powers. McCoy v. York, 193 S.C. 390, 8 S.E.2d 905 (1940). The powers delegated therein to protect the public health are particularly broad, Ward v. Darlington, 183 S.C. 263, 190 S.E. 826 (1937); indeed such power is "as broad and comprehensive as it was within the power of the State to delegate." Clegg et al. v. City of Spartanburg, 132 S.C. 182, 185, 128 S.E. 36 (1925). Our Supreme Court has concluded that this provision empowers municipalities to regulate beer and wine, Arnold v. Spartanburg, 201 S.C. 523, 23 S.E.2d 735 (1943) as well as pool and billiard rooms, Clegg v. Spartanburg, supra. "The only limitations upon this power of the State ... are the constitutional guaranties which safeguard personal liberty and private property." Clegg, supra, 132 S.C. at 185.

Moreover, "[i]t is settled law that the licensing and regulation of massagists and massage parlors is within the legitimate exercise of a municipality's police powers." McQuillin, Municipal Corporations, § 24.123(a) (3d ed. revised). The regulation of massage parlors is a legitimate governmental activity for the protection of the public health and welfare. Schaeffer v. Kleinknecht, (Mo. App.), 604 S.W.2d 751 (1980). But it is universally recognized, both by the general law and § 5-7-30, that a municipal ordinance cannot conflict with "a state law of general

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character and statewide application...", 56 Am.Jur.2d, Municipal Corporations, § 374. However, it is also well established by our Supreme Court that where the state law is silent and the municipal law speaks, "there can be no conflict between them." Arnold v. City of Spartanburg, 201 S.C. 523, 536, 23 S.E.2d 735 (1943). See also, 62 C.J.S., Municipal Corporations, § 144. Accordingly, assuming that § 40-29-10 et seq. were not existent, a municipality probably could reasonably regulate massage parlors pursuant to the general police powers bestowed upon it by § 5-7-30. Cf. Schaeffer v. Kleinknecht, supra.

Again assuming that Section 40-29-10 et seq. is non-existent, the question of a county's power to regulate massage parlors is somewhat more problematical. No statute expresses with the same precision as does § 5-7-30 with regard to municipalities, that counties possess general police powers. Our Supreme Court has stated, moreover, that a county possesses "only such powers and can perform only such duties as are expressly or impliedly conferred or imposed upon it by constitutional or statutory provisions...." Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). Thus, we must address ourselves to the question of whether § 4-9-10 et seq., which bestows upon counties "home rule", was intended to confer upon those entities general police powers. We conclude that it was.

In 1972, the people of South Carolina approved Article VIII of the South Carolina Constitution. The ratification of that Article by the General Assembly occurred in March, 1973. Article VIII is entitled "Local Government." Those portions of Article VIII relative to counties are as follows:

"§ 1 Powers of political subdivisions continued. - The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law.

* * *

"§ 7. Organization, powers, duties, etc., of counties; special laws prohibited. - The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including

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the power to tax different areas at different rates of taxation related to the nature and level of government services provided. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.

* * *

"§ 17. Construction of Constitution and laws. - The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.

See also, Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976).

In an attempt to comply with the constitutional mandate, in 1975 the General Assembly enacted into law Act No. 283. Duncan, 228 S.E.2d at 97. Act No. 283 of 1975 is now codified at Section 4-9-10 et seq. or what is commonly known as the Home Rule Act. The South Carolina Supreme Court has described the powers delegated by the Home Rule Act, particularly § 4-9-30, as a "vast extent of authority... ." Duncan, supra. Section 4-9-30(5) empowers counties

(5) to assess property and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works; water treatment and distribution; sewage collections and treatment; courts and criminal justice administration;

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correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above; (emphasis added).

With respect to this and other provisions of the Home Rule Act, the Supreme Court has stated:

We think it a fair summary to say that ... each county conducts its own governmental affairs (without the necessity of periodic General Assembly intervention) much like municipalities have heretofore operated in this State. This is consistent with the recommendations of the Constitutional Study Committee which proposed new Article VIII. In referring to Section 7, the committee said, "Of course, this restriction would demand that there be an active governing body in each county which would have general powers of local government similar to those now exercised by municipal councils." (emphasis added).

Duncan, 228 S.E.2d supra at 97. And with regard to Section 4-9-30, this office has concluded that the provision "make[s] a general grant of police power to counties." Op. Atty. Gen., December 18, 1978. We have also stated that "[t]he Home Rule Act permits counties to provide by ordinance for public safety and to provide penalties for violations thereof, § 4-9-30(5) (14)", Op. Atty. Gen., May 22, 1979, and that

County governments are given the function of providing for public health and safety. § 4-9-30(5) S.C. CODE, 1976. The general law permits local governments to regulate, under its police powers, the

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possession or consumption of beer and
wine in a public place.

Op. Atty. Gen., January 6, 1978.

While not entirely free from doubt, 1/ we believe these
prior conclusions to be correct. Section 4-9-30(5) enumerates

1/ See, Op. Atty. Gen., Op. No. 4118, Sept. 16, 1975.
In that opinion, it was concluded that counties do not
possess the authority to pass ordinances for the regulation
of noise pollution. It was noted that Act No. 283 expressly
authorizes municipalities to exercise police powers, while
no similar authorization is contained therein with regard to
counties. However, it should be noted that, with respect to
the police powers of municipalities, such powers were
longstanding, and thus Act No. 283 represented simply a
continuation of the same statutory language which had been
used to delegate to municipalities general police powers,
long before the passage of Act No. 283. See, Code of Laws
of South Carolina, § 47-61 (1962); § 47-61 (1952). Thus, as
to cities, it was reasonable for the General Assembly to
carry forward the same basic statutory wording as before.

With respect to counties, however, the situation
was different. No such general police power had existed
prior to Article VIII's adoption and the enactment of Act
No. 283. The General Assembly thus chose with respect to
counties to employ somewhat different language in Act No.
283, enumerating more precisely the areas with which counties
were concerned. But, because the statutory language was
different from that used to give cities the police power
does not mean counties do not also possess police powers in
the areas enumerated. Obviously, the General Assembly could
reach the same result through the use of different language.
And it is well settled that the doctrine of expressio unius
est exclusio alterius is "inapplicable if there is some
special reason for mentioning one thing and none for mentioning
another which is within the statute." 2A Sutherland, Statutory
Construction, § 47.23. See also, Home Building and Loan
Assn. v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139.
Here, as stated above, we believe such a reason exists, and
thus the doctrine should not defeat legislative intent.
Moreover, in light of Article VIII, § 17's mandate that
statutes relating to the powers of local government be
liberally construed, the fact that Act No. 283 states the
powers of counties and cities somewhat differently should
not be given undue emphasis.

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and bestows upon counties a considerable number of traditional police power functions, such as sewage collection, public health, public safety, etc. While it is true these appear to be dealt with in the context of the power of the county to levy taxes and make appropriations, it should also be emphasized that Section 4-9-30(5) also empowers the county "to provide for the regulation and enforcement of the above...." Certainly, this portion of the provision could be read as authorizing counties generally to regulate and enforce such regulations in those traditional police powers areas enumerated. Such a reading is consistent with the mandate of Article VIII, § 17 that "all laws concerning local government shall be liberally construed in their favor." Accordingly, we believe that general police powers constitute "[p]owers, duties and responsibilities granted local government subdivisions ... by law [which can be] ... fairly implied ..." from the Home Rule Act. Id.; see also, Sections 4-9-30(6); 4-9-30(14) [power "to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof ..."]; 4-9(16.1); 4-9(16.2) [abate nuisances]. This conclusion, again, is in accord with several prior opinions of this office and with the case law interpreting the Home Rule Act. See, e.g., Duncan v. York County, supra; see also, Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974). And it is entirely consistent with Article VIII's purpose that "each county conduct its own governmental affairs... ." Duncan, 228 S.E.2d at 97. 2/

Thus, assuming that § 40-29-10 et seq. were not existent, counties, like municipalities, probably could reasonably

2/ We note also our understanding that counties have, since the enactment of Act No. 283 of 1975, continuously, exercised police powers. While such longstanding practice is not immune from scrutiny, neither can it be disregarded. Cf., Scroggie v. Scarborough, 162 S.C. 218, 233-234, 160 S.E. 596 (1931). It is worthy of note that the General Assembly has not seen fit to amend the Home Rule Act in this area in view of such continued exercise of authority, even though the Act has been amended in other areas on several occasions. See, Sutherland, supra, § 49.09. A contemporaneous and practical interpretation of a statute is "influential in the construction of statutes... ." Sutherland, supra at § 49.03. See also, Morrison v. Barksdale, Harp. 101 (1824).

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regulate massage parlors pursuant to the police powers bestowed upon them by the Home Rule Act. 3/ See, § 40-29-10 (regulation of massage parlors is for the protection of the general health, safety, welfare and morals of the citizenry of this State).

Your next question concerns whether municipalities and counties may regulate massage parlors, assuming Section 40-29-10 et seq. is in existence. We believe that they probably can.

As noted earlier, it is well settled that a municipal ordinance cannot conflict "with a State law of general character and statewide application." 56 Am.Jur.2d, Municipal Corporations, § 374. This general rule is in accord with § 5-7-30, bestowing police power upon municipalities. The following sets forth a good summary of the law determining when conflicts between general law and local ordinances occur:

... It has been held that in determining whether the provisions of a municipal ordinance conflict with a statute covering the same subject, the test is whether the ordinance prohibits an act which the statute permits or permits an act which the statute prohibits. Accordingly, it has often been held that a municipality cannot lawfully forbid what the legislature has expressly licensed, authorized, permitted or required, or authorize what the legislature has expressly forbidden.

Prohibitory municipal ordinances may automatically be ousted by the subsequent passage of a state statute which covers the regulation of the same subject which the municipal ordinance purport to prohibit.

3/ Even if counties did not possess general police powers under the Home Rule Act, they clearly possess some regulatory authority. See § 40-29-10 et seq. (licensing); § 4-27-10 et seq. (zoning); § 4-9-30(5) (appropriations and tax levying authority).

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The mere fact that the state, in the exercise of the police power, has made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal ordinance are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith unless the statute limits the requirement for all cases to its own prescription... . Unless statutes are contradictory in the sense that they cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail.

56 Am.Jur.2d, Municipal Corporations, § 374. See also, 62 C.J.S., Municipal Corporations, § 143, 144. As our Supreme Court stated in McAbee v. Southern Ry. Co., 166 S.C. 166, 164 S.E. 444, 445 (1932).

The question as to whether or not a municipal ordinance or regulation is in conflict with the general law is sometimes difficult of solution In order that there be a conflict between a state enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. * * * If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand. * * *

As a general rule, additional regulation to that of the State law does not constitute a conflict therewith. * * * Merely because a municipal ordinance is not as broad as the statute does not render it so inconsistent as to make it void.

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See also, Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735 (1943).

Section 40-29-50 authorizes SLED to make recommendations in the area of licensing massage parlors. However, the statute also extends to municipalities and counties a role in this process. Section 40-29-50(c) provides that SLED

... after completing its investigation, shall forward the application for a license to the governing body of the appropriate municipality or to the governing body of the appropriate county when the location of the business is to be outside of a municipality, together with its recommendation to issue or refuse to issue a license.

The appropriate governing body shall then issue or refuse to issue a license, but no license may be issued unless it is recommended by the division [SLED].

The issuing authority may charge a business license fee on the same basis as other business licenses.

This office has interpreted the foregoing provision as authorizing cities and counties to issue licenses to massage parlors. Op. Atty. Gen., March 30, 1977. Of course, the licensing of an activity and the authority to do so is a major form of governmental regulation. See, State v. Reeves, 112 S.C. 383, 99 S.E. 841 (1917). Accordingly, so long as a municipality or county does not act in contradiction to § 40-29-10 et seq., 4/ it may license massage parlors in conformity with the terms of that act.

4/ Section 40-29-50(c) provides that "[t]he appropriate governing body shall then issue or refuse to issue a license, but no license may be issued unless it is recommended by the division." (Emphasis added.). Clearly, if SLED recommends against issuance of a license, a county or municipality could not then issue such license. See, Op. Atty. Gen., Dec. 21, 1979.

In addition, it would appear that the Legislature, in enacting Section 40-29-10 et seq., did not intend to preempt counties and municipalities from generally regulating massage parlors so long as these entities do not act inconsistently or in conflict with the Massage Parlor Act itself or any other general law. See, Redwood Gym v. Salt Lake Co. Comm., (Utah), 624 P.2d 1138 (1981). It is true that § 40-29-10 et seq. regulates massage parlors in areas other than licensing (see e.g. § 40-29-100, regulating hours; § 40-29-110, prohibiting the treatment of persons of the opposite sex); by so doing, it could be argued that such represents an intent to preempt further regulation by local entities in these areas. See, Lancaster v. Municipal Court for Beverly Hills J.D., 100 Cal. Repr. 609, 494 P.2d 681 (1972). However, since the General Assembly saw fit to allow counties and municipalities a role in the licensing of massage parlors, it would appear inconsistent with that intent then to conclude that the Legislature desired to preempt any further regulation by these entities in other areas. If such were indeed the legislative intent, we believe the General Assembly would have stated its objective far more explicitly. Compare, § 61-13-760 (general state law is intended to occupy the entire field of regulating alcoholic liquors). Accordingly, so long as a municipality or county does not act inconsistently or in conflict with § 40-29-10 et seq., or any other general law, 5/ these entities may reasonably regulate massage parlors pursuant to their general police powers.

5/ It should here be noted that § 4-9-30(14) provides that "[n]o ordinance including penalty provisions shall be enacted with regard to matters provided for by the general law, except as specifically authorized by such general law...". Of course, the Massage Parlor Act is a general law and it would thus appear that this provision in the Home Rule Act would be applicable, so long as § 40-29-10 et seq. remains in existence. In light of Article VIII, § 17's mandate that the powers of counties are to be liberally construed, and in view of the fact that the Massage Parlor Act itself gives counties a limited role in the area of licensing, it would be reasonable to construe § 4-9-30(14) in this instance as limiting the county only with respect to penalty provisions in those areas specifically mentioned in § 40-29-10 et seq.; under this interpretation, the county would thus not be constrained in enacting penalty provisions as to those matters not covered by § 40-29-10 et seq. [e.g. as to location]. We express no opinion, however, as to


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CONCLUSION

In conclusion, it appears that both municipalities and counties possess certain authority to regulate massage parlors whether or not Section 40-29-10 et seq. is existent. If Section 40-29-10 et seq. is non-existent, cities could regulate massage parlors generally, pursuant to their police powers. As to the county's exercise of police power, we also believe such authority to regulate these establishments presently exists under the Home Rule Act; however, since this question is not free from doubt, legislative clarification is probably advisable. If Section 40-29-10 et seq. is existent, cities and counties still could generally regulate massage parlors, so long as they do not act inconsistently and in conflict with Section 40-29-10 et seq. or any other general law.

Sincerely,


T. Travis Medlock
Attorney General

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5/ Continued
whether this suggested reading of § 4-9-30(14) would be adopted by the courts. In any event, § 4-9-30(14) further provides that "[c]ounty officials are ... empowered to seek and obtain compliance with ordinances and regulations issued pursuant thereto through injunctive relief in courts of competent jurisdiction." Thus, even in the face of § 4-9-30(14)'s limitation as to "penalties", counties may still effectively regulate massage parlors.

APPENDIX 2

TITLE 16 CRIMES AND OFFENSES

**TITLE 23 COUNTIES; TITLE 26 CRIMINAL CODE OF
GEORGIA; TITLE 27 CRIMINAL PROCEDURE; TITLE 38
EVIDENCE; TITLE 79A PHARMACISTS, PHARMACY AND
DRUGS; TITLE 85 PROPERTY; TITLE 92A PUBLIC SAFETY**

CHAPTER 1 GENERAL PROVISIONS

16-1-1.

26-101 Title

This title shall be known and may be cited as the "Criminal Code of Georgia."
(Acts 1968, pp. 1249, 1260.)

16-1-2.

26-102 General purposes

The general purposes of this title are:

- (1) To forbid and prevent conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
 - (2) To give fair warning of the nature of the conduct forbidden and the sentence authorized upon conviction;
 - (3) To define that which constitutes each crime; and
 - (4) To prescribe penalties which are proportionate to the seriousness of crimes and which permit recognition of differences in rehabilitation possibilities among individual criminals.
- (Acts 1968, pp. 1249, 1260.)

16-1-3.

26-401 Definitions

As used in this title, the term:

- (1) "Affirmative defense" means, with respect to any affirmative defense authorized in this title, unless the state's evidence raises the issue invoking the alleged defense, the defendant must present evidence thereon to raise the issue. The enumeration in this title of some affirmative defenses shall not be construed as excluding the existence of others.
- (2) "Agency" means:
 - (A) When used with respect to the state government, any department, commission, committee, authority, board, or bureau thereof; and
 - (B) When used with respect to any political subdivision of the state government, any department, commission, committee, authority, board, or bureau thereof.
- (3) "Another" means a person or persons other than the accused.
- (4) "Conviction" includes a final judgment of conviction entered upon a verdict or finding of guilty of a crime or upon a plea of guilty.
- (5) "Felony" means a crime punishable by death, by imprisonment for life, or by imprisonment for more than 12 months.
- (6) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any person.
- (7) "Forcible misdemeanor" means any misdemeanor which involves the use or threat of physical force or violence against any person.
- (8) "Government" means the United States, the state, any political subdivision thereof, or any agency of the foregoing.
- (9) "Misdemeanor" and "misdemeanor of a high and aggravated nature" mean any crime other than a felony.
- (10) "Owner" means a person who has a right to possession of property which is superior to that of a person who takes, uses, obtains, or withholds it from him and which the person taking, using, obtaining, or withholding is not privileged to infringe.
- (11) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all crimes or

ARTICLE 5
CRUELTY TO CHILDREN

16-5-70.**26-2801 Cruelty to children**

(a) A parent, guardian, or other person supervising the welfare of or having immediate charge or custody of a child under the age of 18 commits the offense of cruelty to children when he willfully deprives the child of necessary sustenance to the extent that the child's health or well-being is jeopardized.

(b) Any person commits the offense of cruelty to children when he maliciously causes a child under the age of 18 cruel or excessive physical or mental pain.

(c) A person convicted of the offense of cruelty to children as provided in this Code section shall be punished by imprisonment for not less than nor more than 20 years.

(Acts 1968, pp. 1249, 1322; 1978, pp. 228, 229; 1981, p. 683, eff. July 1, 1981.)

CHAPTER 6
SEXUAL OFFENSES

16-6-1.**26-2001 Rape**

(a) A person commits the offense of rape when he has carnal knowledge of a female forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ.

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life, or by imprisonment for not less than one nor more than 20 years.

(Acts 1968, pp. 1249, 1299; 1978, p. 3, eff. July 1, 1978.)

16-6-2.**26-2002 Sodomy; aggravated sodomy**

(a) A person commits the offense of sodomy when he performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another. A person commits the offense of aggravated sodomy when he commits sodomy with force and against the will of the other person.

(b) A person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years. A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by imprisonment for not less than one nor more than 20 years.

(Acts 1968, pp. 1249, 1299.)

16-6-3.**26-2018 Statutory rape**

(a) A person commits the offense of statutory rape when he engages in sexual intercourse with any female under the age of 14 years and not his spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the female.

(b) A person convicted of the offense of statutory rape shall be punished by imprisonment for not less than one nor more than 20 years.

(Acts 1968, pp. 1249, 1302.)

16-6-4.**26-2019 Child molestation**

(a) A person commits the offense of child molestation when he does any immoral or indecent act to or in the presence of or with any child under the age of 14 years with the intent to arouse or satisfy the sexual desires of either the child or the person.

(b) A person convicted of the offense of child molestation shall be punished by imprisonment for not less than one nor more than 20 years.

(Acts 1968, pp. 1249, 1302.)

16-6-5.**26-2020 Enticing a child for indecent purposes**

A person commits the offense of enticing a child for indecent purposes when he solicits, entices, or takes any child under the age of 14 to any place whatsoever for the purpose of child molestation or indecent acts and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years.

(Acts 1968, pp. 1249, 1302.)

16-6-14.**26-2017 Pandering by compulsion**

A person commits the offense of pandering by compulsion when he by duress or coercion cause a female to perform an act of prostitution and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than ten years.

(Acts 1968, pp. 1249, 1302.)

16-6-15.**26-2003 Solicitation of sodomy**

A person commits the offense of solicitation of sodomy when he solicits another to perform or submit to act of sodomy and, upon conviction thereof, shall be punished as for a misdemeanor.

(Acts 1968, pp. 1249, 1299.)

16-6-16.**26-2021 Masturbation for hire**

(a) A person, including a masseur or masseuse, commits the offense of masturbation for hire when he erotically stimulates the genital organs of another, whether resulting in orgasm or not, by manual or other bodily contact exclusive of sexual intercourse or by instrumental manipulation for money or the substantial equivalent thereof.

(b) A person committing the offense of masturbation for hire shall be guilty of a misdemeanor.

(Acts 1975, pp. 402, 403.)

16-6-17.

26-9939a Unlawful for masseur or masseuse to massage any person in certain buildings, structures or places; definitions

(a) It shall be unlawful for any masseur or masseuse to massage any person in any building, structure, or place used for the purpose of lewdness, assignation, prostitution, or masturbation for hire.

(b) As used in this Code section, the term:

(1) "Masseur" means a male who practices massage or physiotherapy, or both.

(2) "Masseuse" means a female who practices massage or physiotherapy, or both.

(c) Any person who violates this Code section shall be guilty of a misdemeanor.

(Acts 1975, pp. 402, 404.)

16-6-18.**26-2010 Fornication**

An unmarried person commits the offense of fornication when he voluntarily has sexual intercourse with another person and, upon conviction thereof, shall be punished as for a misdemeanor.

(Acts 1968, pp. 1249, 1300.)

16-6-19.**26-2009 Adultery**

A married person commits the offense of adultery when he voluntarily has sexual intercourse with a person other than his spouse and, upon conviction thereof, shall be punished as for a misdemeanor.

(Acts 1968, pp. 1249, 1300.)

16-6-20.**26-2007 Bigamy**

(a) A person commits the offense of bigamy when he, being married and knowing that his lawful spouse is living, marries another person or carries on a bigamous cohabitation with another person.

(b) It shall be an affirmative defense that the prior spouse has been continually absent for a period of seven years, during which time the accused did not know the prior spouse to be alive, or that the accused reasonably believed he was eligible to remarry.

(c) A person convicted of the offense of bigamy shall be punished by imprisonment for not less than one nor more than ten years.

(Acts 1968, pp. 1249, 1300.)

16-6-21.**26-2008 Marrying a bigamist**

(a) An unmarried man or woman commits the offense of marrying a bigamist when he marries a person whom he knows to be the wife or husband of another.

(b) It shall be an affirmative defense that the prior spouse of the bigamist has been continually absent for a period of seven years, during which time the accused did not know the prior spouse of the bigamist to be alive, or that the accused reasonably believed the bigamist was eligible to remarry.

(c) A person convicted of the offense of marrying a bigamist shall be punished by imprisonment for not less than one nor more than ten years.

(Acts 1968, pp. 1249, 1300.)

APPENDIX 3

LICENSING PROGRAM FOR MASSUERS/MASSUESES

STATEMENT OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u>
Massuer/Massuese License	-	-	\$1,500
TOTAL	-	-	<u>\$1,500</u>
 <u>Expenditures (Estimated)</u>			
.5% of Regulatory Budget	-	-	\$ 985
Computer Support	-	-	185
Record Search	-	-	15
Vehicle Replacement Cost	-	-	50
Other Equipment Replacement Cost	-	-	15
Vehicle Expense	-	-	25
Administrative Cost	-	-	175
TOTAL			<u>\$1,450</u>

Source: Lt. Paul Moran, Regulatory Department Supervisor

APPENDIX 4

FEE SCHEDULE FOR THE MASSEURS/MASSEUSES PROGRAM

<u>Licenses</u>	<u>Initial Fee</u>	<u>Yearly Renewal</u>
Masseur/Masseuse	\$500	\$250

POLYGRAPH LICENSING PROGRAM

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INTRODUCTION

After reviewing the laws and operations of the Polygraph Licensing Program, the Audit Council has concluded that regulation of the polygraph industry is needed to protect the public welfare. However, changes are needed in the Program's operations and statutes.

BACKGROUND AND HISTORY

The registration of polygraph examiners and interns in South Carolina began in 1972. Act 1487 of 1972 directed the State Law Enforcement Division (SLED) to regulate the polygraph profession. The Polygraph Licensing Program is administered by SLED's Polygraph Section.

The function of the polygraph examination is to detect deception or verify truth of statements by use of instrumentation such as lie detectors, polygraphs, deceptographs, and related devices and instrumentation. Section 40-53-60 of the South Carolina Code of Laws limits the practice of polygraph examiner or intern to licensed individuals. Qualifications for polygraph licensure include a bachelor's degree or a high school education with five years of active investigative experience, completion of a polygraph examiner course and intern training. A State examination is required of all applicants for licensure. Persons who apply by reciprocity and who have not taken an exam in the reciprocal state are examined in South Carolina.

In FY 83-84, 149 polygraph examiners and interns were licensed in South Carolina including 127 private examiners, five private interns, 16 law enforcement examiners, and one law enforcement intern. Fifty-eight (39%) of the 149 examiners and interns reside in South Carolina. Of the 58 resident examiners, 17 work for law enforcement, and 41 work privately.

Thirty states regulate the polygraph profession by licensing examiners. In addition, 12 states and the District of Columbia have legislation which in some manner limits use of the polygraph test. All of the

southeastern states require polygraph licensure. The administering authority for the southeastern states range from a board (Alabama, Georgia, Mississippi, North Carolina and Tennessee) to a state agency (The Department of State in Florida, the Department of Justice of the Commonwealth in Kentucky, and the Department of Commerce in Virginia).

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAM OR FUNCTION OF THE AGENCY UNDER REVIEW.

Since the Polygraph Licensing Program does not regulate fees charged for polygraph services, it has no direct impact on consumer prices. Costs to applicants include registration and licensing fees. Annual fees range from \$25 for the internship license to \$50 for the polygraph examiner's fee (see Appendix 2). The Audit Council found no measurable cost increase or reduction as a result of the licensing law.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

Although the Polygraph Licensing Program has not adequately handled complaints, conducted inspections or monitored the industry, deregulation of the polygraph profession in South Carolina could have a significant, negative impact on the public welfare. Polygraph test results can cause individuals to lose job opportunities or jobs they currently hold. Because attorneys may use the polygraph to verify the statements of clients and witnesses, results can also affect their willingness to accept clients in criminal cases. The

polygraph test is also used as an investigative aid by police departments. An official with the Richland County Sheriff's Department told the Audit Council that use of the polygraph test decreases investigative time and helps to identify suspects.

Most (89%) of the 149 licensed examiners and interns in South Carolina work in the private sector. Many large retail companies (drug stores, gas stations, jewelry stores, groceries, convenience stores, etc.) in the State use polygraph testing. Private polygraph examiners screen job applicants, and test employees periodically or in the case of problems such as theft. The average number of tests given a month per examiner, according to 15 in-state private examiners and interns surveyed by the Audit Council, was 121. If this average is generally accurate for the 41 resident private examiners and interns, there are over 59,000 exams administered yearly in the State by private examiners.

Forty-two states and the District of Columbia either license examiners (30) or restrict the use of the polygraph test (13). All southeastern states have licensing and/or registration programs. South Carolina has licensing reciprocity with seven of the southeastern states (Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee and Virginia). Without regulation, South Carolina could not maintain reciprocity.

The importance of polygraph training is evidenced by the licensing requirements of the southeastern states. All of the southeastern states require completion of a polygraph school or course approved by their board/program, and seven of eight require passage of an examination. Additionally, all southeastern

states require at least a six-month internship or training period supervised by a licensed polygraph examiner. Because the polygraph examination can have a major impact on individuals' future and/or reputation, the profession should be regulated to help ensure adequate training of examiners, and protection of the public.

- (3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Polygraph Licensing Program is administered by the Polygraph Section of the State Law Enforcement Division (SLED), which does not maintain a separate operating budget for the program. The program generates revenue through licensing and registration fees for polygraph examiners and interns. Revenue is turned over to the General Fund as received.

The Chief Examiner and Administrative Secretary of the Polygraph Section estimate that they spend approximately 20% of their time in handling licensing operations. The Program's revenue and estimated expenditures are provided in Appendix 1; a schedule of fees is presented in Appendix 2.

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council found that the Polygraph Licensing Program has not implemented an adequate inspection system, nor has it developed policies and procedures to handle complaints or to set suspension periods. These problems are discussed in detail below.

Inspection System Needs Improvement

The Polygraph Licensing Program has not maintained records on inspections conducted by program staff, and has no guidelines for inspections. According to program staff, inspections are conducted when they are in an area on other polygraph business and have the time to see examiners.

Section 40-53-40 of the South Carolina Code of Laws sets minimum standards for polygraph instruments which measure physiological change. Section 40-53-140 states that a license must be displayed at the business of an examiner or intern. Program staff told the Audit Council that inspections are also conducted to check the tests and polygraph charts.

Licensing Program staff report that 28 inspections have been conducted in the last three fiscal years. The names of polygraph businesses inspected could be recalled by program staff only for FY 82-83. There are 27 polygraph businesses in South Carolina including 16 private offices and 11 law enforcement offices. Of 12 inspections conducted in FY 82-83, nine involved three polygraph offices. These three offices were inspected three times each despite the lack of any noted problems.

The program lacks policies, procedures, standards and schedules for conducting inspections. This has contributed to an ineffective and inefficient system, in which few examiners have been inspected.

RECOMMENDATION

SLED SHOULD DEVELOP POLICIES FOR PERIODIC
INSPECTION OF POLYGRAPH EXAMINERS.

INSPECTION RECORDS SHOULD BE MAINTAINED.
THESE RECORDS SHOULD INCLUDE THE INSPECTION
DATE; EXAMINER INSPECTED; PROBLEM/S FOUND;
DATE OF RESOLUTION; FOLLOW-UP AND; SIGNATURE
OF SLED STAFF.

Policies and Procedures Manual Needed

The Polygraph Licensing Program does not have a policies and procedures manual. Decisions governing program actions on complaints, suspensions and inspections require such a manual. Policies need to address the handling of complaints, criteria for suspension periods and inspection of examiners.

The lack of written policies and procedures can result in program inconsistency as well as a lack of efficiency in program operations.

RECOMMENDATION

THE PROGRAM SHOULD MAINTAIN A POLICIES
AND PROCEDURES MANUAL.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Polygraph Licensing Program is administered by the Polygraph Section of the State Law Enforcement Division (SLED). The Audit Council's review of the program revealed a lack of opportunity for public participation. This problem is discussed in more detail below.

More Public Input Needed

There is a lack of opportunity for public participation in the Polygraph Licensing Program. SLED, which administers the program, was established as the Administrative Board by the Polygraph Examiners Act of 1972. This Board is comprised entirely of SLED personnel. Board members are appointed for indefinite terms. Since the Board does not have scheduled meetings or public membership, public participation is limited to the complaint process (see p. 56).

The Council of State Governments (CSG) recommends public membership on regulatory boards to ensure input from persons outside the regulated group. According to the CSG, regulatory boards should consist of a minimum of two public members.

Among the southeastern states, Alabama, Georgia, Mississippi, North Carolina and Tennessee have boards with public, industry, and/or law enforcement representation. Florida has an advisory council comprised of industry members. The size of the boards or councils range from ten in North Carolina to three in Mississippi. Kentucky and Virginia have neither a board nor an advisory council.

The Licensing Program is not readily accessible to the public. Although the Polygraph Section's address and phone number are listed in the State and Public Directories, the listings make no reference to

the program's regulatory function. The public is not made aware of who to contact to lodge a complaint or obtain information.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING SECTION 40-53-10 OF THE SOUTH CAROLINA CODE OF LAWS TO ESTABLISH AN ADVISORY COUNCIL FOR THE POLYGRAPH LICENSING PROGRAM WITH REPRESENTATION FROM THE PUBLIC, INDUSTRY AND LAW ENFORCEMENT.

THE REGULATORY FUNCTION SHOULD BE REFLECTED IN THE POLYGRAPH SECTION'S ADDRESS AND PHONE LISTINGS IN THE PUBLIC AND STATE TELEPHONE DIRECTORIES.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Program does not duplicate the functions or services administered by any other State, federal or other agency.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES

SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Audit Council found problems in the handling, documentation and filing of complaints. A more detailed explanation is given below.

Complaint Handling Needs Improvement

A review of the Polygraph Licensing Program's complaint files showed that documents and records are not maintained adequately. Although a central complaint file is maintained, neither a standard complaint form nor a log have been developed. All complaints and inquiries are not recorded. Records are kept only on those complaints which the staff considers to be "serious," and only those are given to the staff for investigation.

Although the staff estimates that the program receives two to three complaints or inquiries per year, the Audit Council could find only two complaints recorded. One complaint recorded in 1982 involved failure by an examiner to provide a subject with test results upon request.

A second complaint, registered in 1977, concerned an examiner allegedly asking unethical and irrelevant questions on polygraph tests (see Appendix 3). The Audit Council was told by the former program administrator that he thought that this examiner received a 30-day suspension for his actions. However, no records could be located by program staff to verify a suspension. Additionally, the program has no records showing the examiner has ever been inspected (see p. 53). The examiner in question is presently licensed in South Carolina.

Since the program does not record all complaints, an accurate assessment of the nature and subject of complaints received could not be conducted. Problems with examiners, or with industry practice, may not be detected. The program cannot ensure that the public is protected against incompetent and/or unethical examiners.

RECOMMENDATIONS

THE PROGRAM SHOULD DEVELOP POLICIES AND PROCEDURES TO HANDLE COMPLAINTS. PROCEDURES SHOULD INCLUDE A STANDARD FORM AND LOG TO RECORD ALL COMPLAINTS AND INQUIRIES. INFORMATION THAT SHOULD BE INCLUDED IN THE LOG ARE COMPLAINANT; NATURE OF COMPLAINT; DATE OF COMPLAINT, AND MEANS OF CONTACT; ACTION BY THE PROGRAM AND; FOLLOW-UP.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The Polygraph Licensing Program has complied with the authority granted it under Act 1487 of 1972. One of the qualifications for licensure, however, is not clearly defined.

Investigative Experience Requirement Vague

Section 40-53-70(e) of the South Carolina Code of Laws requires a polygraph examiner to be a college graduate or a high school graduate with five consecutive years of "active investigative experience." Although this requirement does not specify the type of experience, private investigative experience (PIE) is not accepted by SLED. According to SLED officials, private investigators do not have the criminal training required. The American Polygraph Association (APA) requires five years "acceptable investigative experience" when an associate member is upgraded to a full member. Like SLED, the APA does not accept PIE for the experience requirement. APA officials told the Audit Council that this experience is not accepted since many states do not license private investigators.

Among the southeastern states, South Carolina and Georgia do not accept PIE. Five southeastern states (Alabama, Florida, Mississippi, Tennessee and Virginia) accept PIE. Kentucky and North Carolina do not have an "active investigative experience" requirement.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
SPECIFYING ACCEPTABLE TYPES OF "ACTIVE
INVESTIGATIVE EXPERIENCE" FOR LICENSURE
QUALIFICATION.

APPENDICES

APPENDIX 1

LICENSING PROGRAM FOR POLYGRAPH EXAMINERS

STATEMENT OF REVENUES AND EXPENDITURES

<u>Revenues</u>	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u> (Estimated)
					\$ 650 ¹ 500 ² 150 ³ 6,950 ⁴
Examiners and Interns Fees	\$7,225	\$8,000	\$8,825	\$9,500	
TOTAL	<u>\$7,225</u>	<u>\$8,000</u>	<u>\$8,825</u>	<u>\$9,500</u>	<u>\$8,250</u>
<u>Expenditures</u> (Estimated)					
Administrative Cost	\$4,427	\$4,915	\$6,859	\$7,163	\$7,701
Printing	90	90	140	140	140
Postage	<u>45</u>	<u>45</u>	<u>75</u>	<u>75</u>	<u>75</u>
TOTAL	<u>\$4,562</u>	<u>\$5,050</u>	<u>\$7,074</u>	<u>\$7,378</u>	<u>\$7,916</u>

Note: In March 1983 the Polygraph Licensing Program implemented a system to categorize polygraph fees. Prior to this year, fees were not classified. These figures are shown for FY 83-84.

- ¹Application Fees
- ²Original Examiner License Fees
- ³Intern License Fees
- ⁴Renewal Fees

Source: SLED Finance Department Correspondence and Documents,
and Lt. Hartley, Chief Examiner, Polygraph Section.

APPENDIX 2

FEE SCHEDULE FOR THE POLYGRAPH LICENSING PROGRAM

<u>License</u>	<u>Fees</u>
Examiner	\$50
Intern	25
Duplicate Examiner/Intern	25

-
1. License fees are the same for new and renewal.
 2. Intern extension fee is the same as renewal.
 3. Fee must accompany application and is non-refundable.

APPENDIX 3

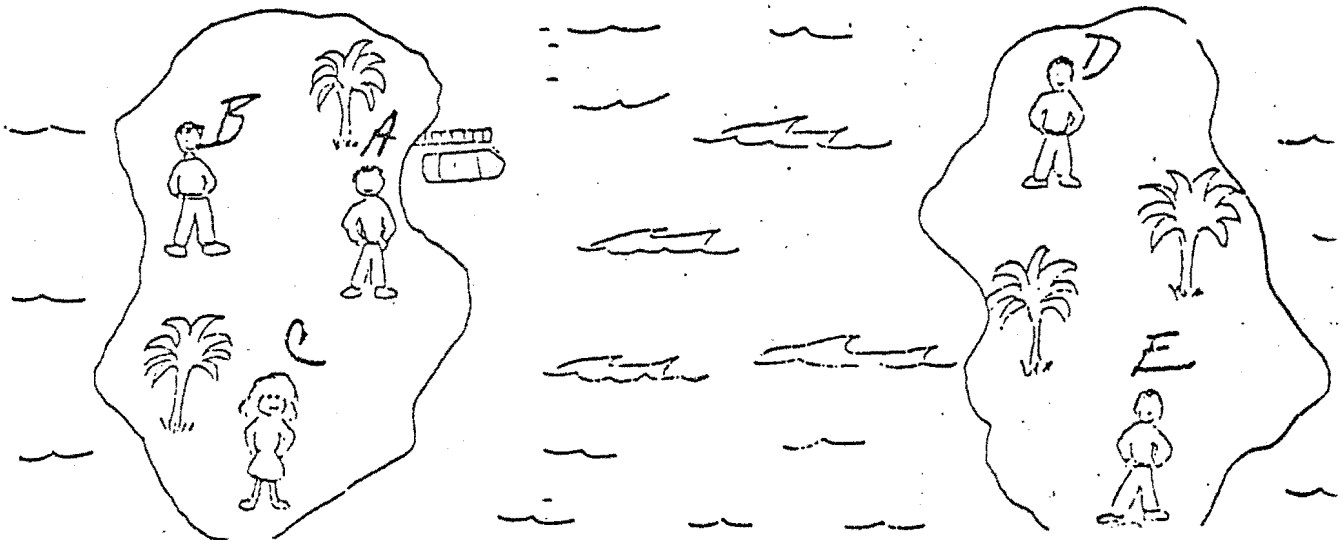
The girl on the Island to the left is stranded with (2) men. There are sharks in the water so that she cannot swim across. One of the men on the Island to the left has a boat, he told her he would take her across, if she would go to bed with him. The girls husband and boyfriend are on the Island to the right.

LAC COMMENTS:

In 1977, this statement and diagram were included on a pre-employment test conducted by a South Carolina polygraph examiner. Questions regarding the presented situation were asked of female examinees, such as "What would you do?"

For Office Use Only

1. _____
2. _____
3. _____
4. _____
5. _____



PRIVATE DETECTIVE/PRIVATE SECURITY LICENSING PROGRAM

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INTRODUCTION

After reviewing its operations and laws, the Legislative Audit Council concludes that the Private Detective/Private Security Agency program should continue. However, changes are recommended to increase efficiency, public participation and clarity of regulatory statutes.

BACKGROUND AND HISTORY

Section 40-17-10 et. seq. of the South Carolina Code of Laws regulates companies and individuals engaged in private detective, private security, and premise security work. The Chief of the South Carolina State Law Enforcement Division (SLED) is required to investigate all persons applying for a private detective or private security company license, or premise security operation license. The Chief of SLED is also required to verify qualifications and register each person performing the duties of a private detective or security guard.

The Regulatory Department of SLED administers the provisions of Section 40-17-10 et. seq. In addition, the Regulatory Department also administers State statutes governing massage parlors, and pistols and other firearms. Since its creation in 1972, the Regulatory Department has grown from a staff of two to a staff of ten in FY 82-83.

The qualifications for a private detective, private security or combination private detective and private security company license are that an applicant must: 1) be 18 years old; 2) be a citizen of the United States; 3) be of good moral character; 4) not have been convicted of a felony or crime of moral turpitude; 5) not have committed an act of dishonesty or fraud; 6) have a competent training officer and adequate training program; and 7) have two years experience. The qualifications for licensure of a premise security operation are proof of 1) fiscal responsibility and 2) a competent training officer and adequate training program.

Individuals registered as private detectives or security guards must have completed an acceptable training program and must not have

been convicted of a felony or any crime involving moral turpitude. Further, they must not be alcoholics, drifters, vagrants, or have been dishonorably discharged from the armed forces or refused a license for any reason other than minimum experience or have had their license revoked or suspended, or have a record of mental illness and not have been restored to legal capacity.

Section 40-17-150 exempts government employees, consumer reporting agencies, attorneys and insurance agents from the requirements of the Act in the performance of their duties. In addition, full-time police officers working as security guards on an individual, independent basis are exempted from the Act.

Functions of a private detective include: investigating individuals, thefts, and fires; securing evidence to be used in a court of law; and process serving. Security guard duties include protection against vandalism and theft, and traffic control. Security guards may also work as body guards. As of FY 82-83, 7,885 individuals were registered under the Act, and 349 business licenses were issued, including those for private detective, private security, combination private detective and private security, and premise security operations.

The Audit Council conducted a survey of the eight southeastern states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, and Virginia) to determine the licensing and registration requirements for private detective, private security, and premise security operations and individuals (see Table 1). The administering authority for these states ranges from a board (Georgia and North Carolina) to a state agency (Department of Commerce in Virginia) to county authorities (Tennessee).

TABLE 1
LICENSURE AND REGISTRATION REQUIREMENTS OF PRIVATE DETECTIVE,
PRIVATE SECURITY, AND PREMISE SECURITY OPERATIONS FOR THE
SOUTHEASTERN STATES

<u>State</u>	<u>License Required For:</u>		
	<u>Private Detective Company</u>	<u>Private Security Company</u>	<u>Premise Security Operation</u>
South Carolina	Yes ¹	Yes	Yes
Alabama	Yes ¹	No	No
Florida	Yes	Yes	No ²
Georgia	Yes	Yes	No ²
Kentucky	No	No	No
Mississippi	No	No	No ³
North Carolina	Yes	Yes	No ³
Tennessee	No	No	No
Virginia	Yes	Yes	No

<u>State</u>	<u>Registration Required To Work As:</u>		
	<u>Private Detective</u>	<u>Private Security Guard</u>	<u>Premise Security Guard</u>
South Carolina	Yes	Yes	Yes
Alabama	No	No	No ⁴
Florida	Yes	Yes	Yes ⁴
Georgia	Yes	Yes	No
Kentucky	No	No	No
Mississippi	Yes ¹	No	No ⁴
North Carolina	Yes	Yes	Yes ⁴
Tennessee	Yes	No	No ⁴
Virginia	Yes	Yes	Yes ⁴

¹Alabama and Mississippi require only a business license.

²Licensure of premise security operations is voluntary.

³Requires premise security operations employing armed guards to register.

⁴Exempts unarmed premise security guards from registration.

Source: Code of Laws of each state and state officials.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Private Detective and Private Securities Agencies (PD/PS) Act does not set prices to be charged by licensees for their services, so it has no direct influence on consumer prices. However, the cost of regulation may add a significant amount to the cost of the services. The PD/PS Act requires each security guard to be trained and registered. The North Carolina/South Carolina representative for the Committee of National Security Companies (CONSCO) estimates a yearly turnover rate of 200% in the industry. Ultimately, this cost of regulation is borne by the consumer.

In 1982, an amendment to the PD/PS Act increased the licensing fee for a private detective or private security company from \$100 to \$200 and for a combination private detective/private security company firm \$300 to \$500. In addition, the registration fee for a private detective or private security guard increased from \$5 to \$25. Some companies pay their employees' registration fees, while others do not. The North Carolina/South Carolina representative for CONSCO reported that the increase in fees did not cause an increase in prices. However, four company managers in South Carolina stated to the Audit Council that the fee increase did cause them to raise their prices.

(2) WHAT ECONOMIC, FISCAL, AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The absence of administration of the Private Detectives and Private Security Agencies (PD/PS) Act could result in a threat to the public health, safety, and welfare. Security guards perform quasi-law enforcement functions, including protection against vandalism and theft, and traffic control, often in contact with the public. Additionally, security guards may carry weapons in the performance of their duties, including guns and night sticks. Private detectives provide information concerning missing persons, stolen goods, responsibility for accidents, and may provide evidence to be used in civil or criminal trials.

The question of governmental regulation of private security was discussed in the 1976 Report of the Task Force on Private Security by the National Advisory Committee on Criminal Justice Standards and Goals (CJSG). While recognizing the "justifiably strong concern" regarding increased governmental regulation, the CJSG report recommended regulation based on four points:

- (1) Private security services primarily exist to protect life and property from criminal attack... it is vital that some control other than laissez-faire capitalism...be present.
- (2) A major percentage of all private security services used by business involved guards and investigators...in which they have direct contact with the public...actions may be taken that could violate constitutional guarantees of individuals...
- (3) ...certain private security personnel...carry weapons capable of killing. Controls are

needed to ensure that these weapons are only used under conditions conforming to the exact letter and spirit of the law.

- (4) ...controls are needed to protect the public from situations in which private security personnel may inappropriately adopt the posture or appearance of public law enforcement personnel.

The PD/PS Act prevents convicted felons from establishing or being employed by private detective or private security firms. In addition, the PD/PS Act sets a minimum level of experience required to operate a private detective or private security business. Four hours of training is required for all security guards. If armed, a security guard must receive an additional four hours of training in the use of handguns.

In the absence of regulation, unarmed security guards would no longer be required to receive classroom training. The requirement that armed guards receive training in the State laws regarding firearms would not change. At present, all armed security guards must receive four hours of arms training to carry a firearm. In the absence of regulation, armed guards could demonstrate their knowledge of firearms through proof of prior military experience, a letter from a law enforcement officer, or completion of a training course offered by the State Law Enforcement Division.

- (3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

SLED does not maintain an operating budget for the Private Detective and Private Security (PD/PS) program. SLED officials

estimate that 50% of FY 82-83 Regulatory Department expenditures were used to administer the PD/PS program. In addition, three other SLED departments provided support to the PD/PS program, Administration, General Law Enforcement, and Criminal Records. Approximately 41% of the total estimated cost of administering the PD/PS program was borne by these three departments in FY 82-83.

Revenue from PD/PS licensing and registration fees is also estimated, since SLED does not maintain a separate revenue category for this program. The Audit Council estimates that approximately 87% of the Regulatory Department's revenue was generated by the PD/PS program in FY 82-83. Estimated costs and revenues generated by the PD/PS program for FY 81-82 through FY 83-84 are provided in Appendix 1. A schedule of fees is presented in Appendix 2.

In FY 82-83 the Regulatory Department had personnel service expenditures for ten classified positions: a supervisor, five agents, three data clerks, and a staff assistant. An Audit Council survey of 47 background investigations conducted for the PD/PS program in 1983 showed that ten General Law Enforcement agents had performed work for the Regulatory Department. According to SLED officials, some General Law Enforcement agents conduct background investigations for the Regulatory Department, when their location is convenient to the applicant's county or when the Regulatory Department agent is working on another assignment.

- (4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council reviewed the operations of the Private Detective and Private Security (PD/PS) program and has noted several problems which may affect its efficiency. Official procedures for background investigations of license applicants are needed. The use of administrative clerks instead of agents to process background investigations, complaints, and inspections could result in increased efficiency. Registration fees for the PD/PS program are inconsistent. These problems are discussed below.

Official Policies and Procedures for Background Investigations Needed

The policies and procedures for conducting background investigations of license applicants have not been "certified as official" by SLED, and according to SLED officials, are used only as guidelines. The Audit Council found considerable variation in the conduct of background investigations.

The unofficial written procedures for conducting a background investigation include an interview with the applicant, and an investigation of the applicant's education, experience, character and reputation, credit, health and police record. Investigations are to be completed in ten working days. These procedures are used to "determine the qualifications for applicants for licenses...", as required by Section 40-17-30(1) of the South Carolina Code of Laws.

An Audit Council survey of the 63 licenses granted in 1983 revealed that 16 (25%) licensee files contained no evidence of a background investigation. Of the 47 remaining cases with background investigations, only 3 (6%) had evidence of an applicant interview, 13 (28%) had evidence of a County Clerk of Court check for outstanding judgments, 29 (62%)

had evidence of interviews with individuals other than the applicants, and 45 (96%) had evidence of a criminal records check. In addition, the average time taken to conduct the background investigations was 15.3 days, 5.3 days longer than policy allows.

The lack of official and consistently applied procedures could result in the licensing of individuals who do not meet statutory qualifications.

RECOMMENDATION

SLED SHOULD PROMULGATE OFFICIAL PROCEDURES
FOR BACKGROUND INVESTIGATIONS OF LICENSE
APPLICANTS.

Use of Investigative Clerks Could Increase Efficiency

Most (91%) of the background investigations conducted in FY 82-83 for the Private Detective and Private Security Agencies (PD/PS) program were conducted by State Law Enforcement Division (SLED) agents. The remaining 9% were conducted by SLED administrative personnel. The use of agents for work which is primarily clerical in nature represents an inefficient use of resources.

In FY 82-83, there were 354 background investigations conducted for the PD/PS program. One hundred and fifty-four of these investigations (44%) were conducted on premise security operation license applicants. These investigations consist of a check for criminal record, outstanding judgments, financial stability (i.e., a letter from the company lawyer or CPA stating the business is viable or a check with the Secretary of State), and a check for a certified trainer for security guards. The

other 200 background investigations were conducted on private detective, private security or combination license applicants. These investigations consist of an applicant interview, and a check of the applicant's education, experience, criminal record, character, credit rating and health. Of these 200 investigations, 65 were for new licensees. The remaining 135 were license renewals, for which background investigations had been conducted previously. The investigations were conducted by Regulatory Division agents and by General Law Enforcement agents. SLED could not provide the number conducted by each type of agent. In cases where applicants were located outside the geographical jurisdiction of Regulatory agents, SLED assigned these cases to General Law Enforcement agents throughout the State, saving travel expenses for Regulatory agents.

Most of the information in a background investigation can be obtained over the phone and through computer inquiries. An exception is the check with the applicant's County Clerk of Court for outstanding judgments. The primary responsibility of SLED agents, and that for which they are trained, is to conduct criminal investigations. SLED could provide no information or statistical data concerning dangerous individuals or situations encountered by SLED agents performing work for the PD/PS program.

Both the North Carolina Protective Services Board, which administers the North Carolina statutes regulating private detectives and private security guards, and the Federal Bureau of Investigation, use investigative clerks to perform the type of work SLED agents perform for the PD/PS program. North Carolina officials estimate savings of approximately \$30,000 a year using investigative clerks, rather than agents.

SLED agents also handle inspections and complaints for the PD/PS program. In FY 82-83 five inspections were conducted, and the Audit Council estimates that the PD/PS program receives 15 complaints a year (see p. 81). Inspections and complaints could be handled primarily by investigative clerks in conjunction with the Regulatory Department Supervisor. SLED agents outside the geographical jurisdiction of the Regulatory Department could continue to conduct the requisite checks with the County Clerk of Court, and necessary person-to-person interviews. Investigative clerks could be hired for the PD/PS program by transferring Regulatory Agents into General Law Enforcement, as General Law Enforcement agents leave or retire.

RECOMMENDATION

SLED SHOULD CONSIDER EMPLOYING INVESTIGATIVE
CLERKS FOR THE PD/PS PROGRAM.

Inconsistent Registration Fees for Private and Premise Security Guards

Registration fees for private security and premise security guards are not equal, despite equivalent duties. Sections 40-17-40, 40-17-80, and 40-17-100 of the South Carolina Code of Laws set the fee for new and renewal registrations for private security and premise security guards. A 1982 amendment to the South Carolina Private Detectives and Private Security Agencies (PD/PS) Act raised the fees for private security guards, but did not change the registration fee for premise security guards.

Prior to the 1982 amendment, the registration fee for private security and premise security guards was \$5. The 1982 amendment raised the registration fee for private security guards to \$25, but did not change the \$5 registration fee for premise security guards.

The duties of private security and premise security guards are essentially the same, according to State Law Enforcement Division (SLED) officials, as are the SLED background investigations conducted for both types of registrations.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING SECTIONS 40-17-40, 40-17-80, AND
40-17-100 OF THE SOUTH CAROLINA CODE OF
LAWS TO MAKE REGISTRATION FEES FOR PRIVATE
SECURITY AND PREMISE SECURITY GUARDS
EQUAL.

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING THE PRIVATE DETECTIVE AND PRIVATE
SECURITY AGENCIES ACT TO ALLOW CHANGES IN
FEES TO BE SET BY REGULATION AND THUS
HANDLED IN COMPLIANCE WITH THE ADMINISTRATIVE
PROCEDURES ACT.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Audit Council has found that more opportunity is needed for public participation in the Private Detective and Private Security (PD/PS) program. The following examines this question in more detail.

Lack of Public Participation

There is a lack of public participation in the Private Detective and Private Security (PD/PS) program. SLED, which administers the program, has no board or advisory council. In addition, the PD/PS program has not promulgated a new rule or regulation since passage of the Administrative Procedures (A.P.) Act in 1977. The A.P. Act requires that notice of a public hearing be published in the State Register if agencies plan to add, amend, or repeal a rule or regulation. Also, the PD/PS program is not listed in the public telephone directory.

The 1976 Report of the Task Force on Private Security by the National Advisory Committee on Criminal Justice Standards and Goals (CJSG) recommends the creation of either a board or advisory council for this type of regulatory program. The report recommends that six groups be represented on the board or council: 1) contract security companies; 2) proprietary security organizations; 3) police; 4) consumers of security services; 5) the public; and 6) registered security employees. The Council of State Governments recommends that a minimum of two public members participate on regulatory boards.

North Carolina and Georgia have PD/PS program boards composed of public, industry, and law enforcement members. Virginia and Florida have advisory councils with industry membership. The size of the board or council ranges from six in Virginia to ten in North Carolina.

The States of Kentucky, Alabama, Mississippi, and Tennessee do not regulate these professions.

Without an advisory council or board the only formal means for public participation is through the complaint process (see p. 81).

RECOMMENDATIONS

AN ADVISORY COUNCIL FOR THE PD/PS PROGRAM
SHOULD BE CREATED WITH REPRESENTATION
FROM INDUSTRY, LAW ENFORCEMENT, AND AT
LEAST TWO PUBLIC MEMBERS.

THE LICENSING OF PRIVATE DETECTIVES AND
SECURITY GUARDS SHOULD BE REFLECTED IN
THE REGULATORY DEPARTMENT'S ADDRESS AND
PHONE LISTING IN THE PUBLIC TELEPHONE DIRECTORY.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES
THE SERVICES, FUNCTIONS, AND PROGRAMS ADMINISTERED BY
ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

The Private Detective and Private Security (PD/PS) program does not duplicate the services, functions, or programs of any other State or federal governmental agency. Local governments may, however, impose local regulations upon security companies and employees. Section 40-17-150 of the South Carolina Code of Laws states:

"The provisions of this chapter do not prevent the authorities of any municipal corporation or political subdivision of the State...from imposing local regulations upon any street patrol special officer or upon any person who furnishes street patrol service..."

Local governments may also require individuals to obtain a business license to operate a private detective or private security business in their city or county.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Audit Council reviewed the SLED Regulatory Department central complaint file maintained since August 1983, and surveyed PD/PS program files for complaints prior to this date. Problems identified included the lack of a complaint log, written policies and procedures for complaint handling, and weaknesses in documentation and response to complainants.

Inadequate System for Handling Complaints

The PD/PS program received five complaints between August and November 1983. The Audit Council was unable to determine the number of complaints received prior to August 1983, but did locate eight complaints filed since 1979 in a survey of company files. Five of the complaints concerned alleged license and/or registration violations; three were consumer complaints of alleged unsatisfactory service; two involved

alleged improper use of firearms; one involved alleged harassment of the public; and one complaint involved alleged jury tampering. The nature of the thirteenth complaint could not be determined. The action taken typically involved several interviews. In no case reviewed by the Council was a hearing held or a license revoked.

Of the cases reviewed, the average resolution time ranged from 20 days (after August 1983) to 61 days (prior to August 1983). The closing dates of the cases were not recorded in four of the 13 cases. In 11 (85%) of the 13 complaints reviewed, there was no evidence that letters were sent to complainants reporting action taken or case disposition. In four of the 13 complaints, the Council could not determine action taken due to the lack of a report or other documentation in the file.

There are three reasons for the programs' problems with complaint handling: (1) there is no central complaint log, providing for documentation of case progress, (2) a variety of individuals have received and initiated paperwork on complaints, and (3) there are no written policies and procedures for the assignment, investigation and resolution of complaints.

Section 40-17-30 of the South Carolina Code of Laws gives the Chief of the State Law Enforcement Division the power and duty to investigate alleged violations of the provisions of law. In addition, Section 40-17-140 allows the Division to suspend or revoke licenses or registrations after hearings, and Section 40-17-170 provides penalties for violation of the provisions of law governing these professions.

The PD/PS program is the primary recourse for the consumer against incompetent, unauthorized or potentially dangerous private detectives and private security guards. Inadequate responsiveness on the program's part may result in a threat to public safety.

RECOMMENDATION

THE REGULATORY DEPARTMENT SUPERVISOR SHOULD DEVELOP WRITTEN POLICIES AND PROCEDURES TO HANDLE COMPLAINTS. ONE EMPLOYEE SHOULD BE IDENTIFIED TO MAINTAIN A CENTRAL LOG. AREAS THAT SHOULD BE ADDRESSED IN THE LOG ARE COMPLAINANT; NATURE OF COMPLAINT; DATE OF COMPLAINT AND MEANS OF CONTACT; ACTION TAKEN, AND; FOLLOW-UP. COMPLAINANTS SHOULD BE FORMALLY APPRISED OF CASE RESOLUTION. EFFORTS SHOULD BE MADE TO REDUCE HANDLING TIME.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The State Law Enforcement Division (SLED) has complied with all applicable State, federal and local statutes and regulations. However, Section 40-17-120 of the South Carolina Code of Laws, which prohibits licensed private detectives from carrying firearms, is being circumvented.

Licensed Private Detectives Carrying Firearms

In FY 82-83, 25 licensed private detectives were issued permits to carry firearms. Section 40-17-120(d) of the South Carolina Code of Laws

states "Permits for carrying firearms shall not be issued to persons licensed as private detectives." The State Law Enforcement Division's (SLED) rules and regulations for the Private Detective and Private Security Agencies Act state "private detectives shall not carry firearms..."

These 25 individuals have combination private detective and private security company licenses. Eleven of the 25 licensees have a permit to carry a firearm while on duty and in uniform as security guards. Fourteen of the licensees have an additional permit allowing them to carry a firearm while not on duty or in uniform. Section 40-17-120(c) of the South Carolina Code of Laws states:

Any person engaged in the private security business or registered in accordance with the provisions of Section 40-17-80, and issued a permit in accordance with this section shall be authorized to carry such firearm in an open and fully-exposed manner only while on duty and in uniform and while going to and from work. Provided, however, that the Division may in its discretion issue an additional written permit to any such person to carry such firearm about his person, whether concealed or not...

Individuals who are licensed as private detectives and possess permits to carry firearms, even though they are also licensed to operate a private security company, are not in compliance with Section 40-17-120(d). However, it should be noted that of the five southeastern states that regulate private detectives, only South Carolina prohibits private detectives from carrying firearms. Members of the profession have indicated to the Audit Council that situations arise in private detective work which may require the use of a firearm for self defense, such as domestic investigations and process serving.

Should the General Assembly consider amending Section 40-17-120 to allow private detectives to carry firearms, it should also consider

implementing a training and/or experience requirement for registered private detectives. Licensed private detectives are required to have two years related work experience, although not necessarily investigative experience. The requirements in other southeastern states range from a minimum of four hours to 41.5 hours of arms training and from no previous experience or training to two years experience or training. The 1976 Report of the Task Force on Private Security by the National Advisory Committee on Criminal Justice Standards and Goals (CJSG) recommends 24 hours of arms training for armed security personnel, which includes private detectives.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING SECTION 40-17-120 TO EITHER RESTRICT
INDIVIDUALS WITH A COMBINATION PRIVATE
DETECTIVE AND PRIVATE SECURITY LICENSE
FROM OBTAINING A PERMIT TO CARRY A FIREARM
OR TO ALLOW PRIVATE DETECTIVES TO CARRY
FIREARMS.

SHOULD THE GENERAL ASSEMBLY CHOOSE TO
ALLOW PRIVATE DETECTIVES TO CARRY FIREARMS,
IT SHOULD CONSIDER IMPLEMENTING TRAINING
AND/OR EXPERIENCE REQUIREMENTS.

APPENDICES

APPENDIX 1

LICENSING PROGRAM FOR PRIVATE DETECTIVES AND PRIVATE SECURITY

STATEMENT OF REVENUES AND EXPENDITURES

<u>Revenues (Estimated)</u>	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u>
Gun License	\$ 74,582	\$292,405	\$325,000
Private Detective			
Private Security			
TOTAL	<u>\$ 74,582</u>	<u>\$292,405</u>	<u>\$325,000</u>
 <u>Expenditures (Estimated)</u>			
50% of Regulatory Budget Including Personnel and Employer Contributions	\$100,276	\$115,264	\$166,230
Computer Support	24,040	24,530	26,000
Record Search	27,745	28,300	30,000
Vehicle Replacement Cost	9,250	9,435	10,000
Other Equipment Replacement Cost	1,850	1,885	2,000
Training	185	190	200
Vehicle Expense	3,420	3,490	3,700
Instructor	1,885	1,885	2,000
Criminal Justice Academy Cost	-	-	14,000
Administrative Cost	10,164	11,014	17,243
TOTAL	<u>\$178,815</u>	<u>\$195,993</u>	<u>\$271,373</u>

Source: Budget and Control Board Document FY 83-84, SLED Budget Request
FY 84-85, and Mr. Paul Moran, Supervisor SLED Regulatory.

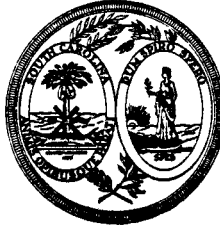
APPENDIX 2

FEE SCHEDULE FOR THE PRIVATE DETECTIVE AND PRIVATE SECURITY
(PD/PS) PROGRAM

<u>Licenses</u>	<u>Fee</u>
Private Detective Companies	\$200
Private Security Companies	200
Combination Private Detective and Private Security Co.	500
Premise Security	25
<u>Registrations</u>	
Private Detective	25
Private Security Unarmed	25
Premise Security Unarmed	5
Private Security Armed	45
Premise Security Armed	25
Temporary	1
<u>Certification</u>	
Training Officer	60

1. There is no additional cost for a concealed weapon permit.
2. License fees are the same for new and renewal, registration fees are the same for new, renewal, and transfer.
3. Fee must accompany application and is non-refundable.

APPENDIX 3
State of South Carolina
Law Enforcement Division



RICHARD W. RILEY
Governor

J. PRESTON STROM
Chief

P.O. Box 21398

Phone 758-6000

Columbia, S.C. 29221

July 31, 1984

Mr. George L. Schroeder
Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

RE: Legislative Audit Council Inquiry: Private Detective/Private Security Licensing Program
Masseurs/Masseuses Licensing Program
Polygraph Licensing Program

Dear Mr. Schroeder:

I am formally responding to my staff's review of July 13, 1984, concerning the above referenced subject matter, which included draft copies of your findings and recommendations. The following paragraphs will address our responses to your recommendations in each category.

I am notifying you that I have discussed your office's findings with Captain J. Leon Gasque, Assistant Director of the South Carolina Law Enforcement Division, and have directed that he and others prepare appropriate answers. Mr. James V. Martin, Director of Administration of the South Carolina Law Enforcement Division; Mr. Paul Moran, Director of Regulatory Services of the South Carolina Law Enforcement Division; Lt. Johnny Hartley, Chief Examiner of the Polygraph Section of the South Carolina Law Enforcement Division; and Mrs. Deborah W. Hamilton, Administrative Assistant with the South Carolina Law Enforcement Division, have assisted in preparing this report.

PRIVATE DETECTIVE/PRIVATE SECURITY LICENSING PROGRAM

RECOMMENDATION:

SLED should promulgate official procedures for background investigations of license applicants.

RESPONSE:

The South Carolina Law Enforcement Division did at one time have a prescribed format for conducting background investigations of licensed applicants (See Attachment # 1), that only seemed to serve the purpose for that department. A study into our reporting system has been underway for approximately one (1) year for the purpose of refining that system, so that it would be more consistent within each department and yet be designed so that the pertinent data could be captured, stored, and retrieved from our computer. During the interim period, the Regulatory

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Department was allowed to use the investigative form (See Attachment # 2), that was being utilized by field agents on all types of inquiries. When the study is completed, there will be a form designed to cover background investigations per se. This Agency is involved in numerous types of background investigations, and it is the Agency's opinion that one form should be designed to secure all of the necessary background data on each and every type of background inquiry. This would accommodate our administrative requirements and save manpower, particularly in the clerical area. Your staff's observation of the inconsistency and completeness of the files relating to PD/PS licenses issued during 1983 has caused the Division to re-evaluate and strengthen its quality control effort.

RECOMMENDATION

SLED should consider employing investigative clerks for the Private Detective/Private Security Program.

RESPONSE:

SLED is currently studying several areas of reorganization within the Agency. The Regulatory Department is among those areas being studied. The general consensus at the time of this writing is to have both clerks and regular agents to conduct the background investigations with regard to the Private Detective/Private Security Program. The clerks would do certain inquiries by telephone and perform record checks where that can be accomplished at SLED Headquarters. The feeling of the administration is that the resident agents who primarily conduct criminal inquiries in a specific geographical area can also conduct the necessary inquiries for background data in the Private Detective/Private Security Program without any additional cost in personnel. Those resident agents have other types of background inquiries to conduct as a part of their responsibilities. The answer to the problem is simply that of scheduling in order that one agent is not overloaded with this type of work and yet a quick and quality response can be given with regard to the Private Detective/Private Security Program.

Plans are being formulated to assign a minimum number of agents to the Regulatory Department for the purpose of auditing the official records of Private Detective/Private Security license holders. A determination will be made after our study is completed as to whether or not such audits could be conducted by clerical types or should they be investigative type or a combination of both. The feeling at the time of this writing is a combination of clerical/agent auditors would be in order. It is not anticipated that any of the above noted approaches would add any additional costs to the operation of the SLED Regulatory Section.

RECOMMENDATION:

The General Assembly should consider amending Sections 4-17-40, 40-17-80, and 40-17-100 of the South Carolina Code of Laws to make registration fees for private security and premise security guards equal.

The General Assembly should consider amending the Private Detective and Private Security Agencies Act to allow changes in fees to be set by regulation and thus handled in compliance with the Administrative Procedures Act.

RESPONSE: (Item # 1)

The South Carolina Law Enforcement Division supports your recommendation but feels that that is a matter for the General Assembly. The South Carolina Law Enforcement Division operates the Regulatory Department primarily on appropriated funds rather than fees; therefore, the amount of money that the General Assembly desires to generate for deposit to the State's General Fund from any given area or industry should not be a concern of this Agency.

RESPONSE: (Item # 2)

The South Carolina Law Enforcement Division agrees with this finding and would suggest that this recommendation be presented to the General Assembly for consideration.

RECOMMENDATION:

An Advisory Council for the PD/PS Program should be created with representation from industry, law enforcement, and at least two public members.

The licensing of Private Detectives and Security Guards should be reflected in the Regulatory Department's address and phone listing in the public telephone directory.

RESPONSE: (Item # 1)

The South Carolina Law Enforcement Division is a component of the Governor's Office. Operationally, the Governor's Office serves as the ultimate and controlling authority for the Division. Organizationally, the Division is reflected as a program area within the Governor's Office's total appropriation. The Division is very comfortable with this arrangement and finds it to be both effective and efficient. The Governor's Office, either directly or indirectly, should not be subjected to any form of Review Board or Council as set forth in the draft report. The South Carolina Law Enforcement Division makes an Annual Report to the General Assembly, which administers the Private Detective and Security Guard business. The Division would have no problem and would recommend that the Private Detective and Security Guard Companies organize themselves in such a way as to study, promulgate suggestions, and prepare needed legislation to be passed on to the South Carolina Law Enforcement Division, as well as the General Assembly. We would suggest that most all of the data generated in the Regulatory Department is subjected to the Freedom of Information Act, and we see no problem in providing such an independent council or organization with what data they determine necessary and appropriate, so long as the gathering of that data is not prohibited by statute, Attorney General's opinion, or costs.

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RESPONSE: (Item # 2)

The South Carolina Law Enforcement Division feels that this recommendation should be accomplished and will, providing funds are available, request this type of listing in the several telephone directories throughout South Carolina with the next printing of such directories.

RECOMMENDATION:

The Regulatory Department Supervisor should develop written policies and procedures to handle complaints. One employee should be identified to maintain a central log. Areas that should be addressed in the log are complainant; nature of complaint; date of complaint and means of contact; action taken, and; follow-up. Complainant should be formally apprised of case resolution. Efforts should be made to reduce handling time.

RESPONSE:

The Regulatory Department's supervisor has now developed a central log detailing complainant, nature of complaint, date of complaint, and means of contact, action taken, and follow-up. Effective July, 1984, the Division has issued four (4) Notice of Hearing Subpoenas with the intention of recommending the revocation of four (4) licenses and six (6) registrants.

The South Carolina Law Enforcement Division for many years handled its rules and regulations by memorandum. For the past nine (9) months the staff of the Division has been authoring a SLED Policy and Procedures Manual. That manual is complete in draft form and being reviewed by a number of persons before it is submitted to the Chief for official adoption. The SLED Policy and Procedures Manual will cover all items involved in the operation of the SLED Regulatory Department.

Although written policies and procedures to handle complaints have not been formalized, the complaint forms indicating complainant, action taken, etc., and the investigation process of such have been put to effective use since August, 1983. The Legislative Audit Council report characterizes the absence of the complaint log, policies, and procedures, as though there is marked absence of any action being taken. In order that the complainant may have due process in those cases warranting action by way of suspension or revocation, it was necessary to first establish hearing procedures. Those procedures were developed and received Attorney General approval June, 1984. Effective July, 1984, the Division has issued four (4) Notice of Hearing Subpoenas with the intention of recommending the revocation of four (4) licenses and six (6) registrants. (See Attachment # 3).

RECOMMENDATIONS:

The General Assembly should consider amending Section 40-17-120 to either restrict individuals with a combination private detective and private security license from obtaining a permit to carry a firearm or to allow private detectives to carry firearms.

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Should the General Assembly choose to allow private detectives to carry firearms, it should consider implementing training and/or experience requirements.

RESPONSE: (Item # 1)

The South Carolina Law Enforcement Division misinterpreted the several statutes setting forth circumstances in which one could be granted permission to carry firearms. A recent oral opinion from the Attorney General has stated that under no circumstances can a Private Detective obtain a pistol permit. The general consensus of the sampling we have taken with local law enforcement agencies reflects that they did not want persons licensed to conduct investigations and who wear "plain clothes" to have the authority to also be armed. The feeling is that this would precipitate combative situations and might encourage private detectives to get into general law enforcement fields.

The Agency is currently perusing its files to obtain the names of those persons who we have in error issued firearms permits to and appropriate action will be taken to relieve those persons of that permit and authority as soon as the oral opinion of the South Carolina Attorney General's Office has been reduced to writing.

RESPONSE: (Item # 2)

The Division does not support the issuance of firearm permits to private detectives; however, if the General Assembly does decide to change the statute to allow private detectives to carry firearms, we would encourage that statute to include fees to come to the South Carolina Law Enforcement Division for the purpose of training such licensees and to further allow the South Carolina Law Enforcement Division to promulgate such rules and regulations, as to determine in the Agency's best judgement on an individual basis what training should be administered, based on the applicants prior firearms experience and his background investigation.

MASSEURS/MASSEUSES LICENSING PROGRAM

RECOMMENDATION:

If the General Assembly chooses to re-establish the Masseurs/Masseuses Program it should consider amending Section 40-29-40 to lower the licensing fee for masseurs and masseuses and allow changes in fees to be set by regulation.

RESPONSE:

The South Carolina Law Enforcement Division agrees with your recommendation.

RECOMMENDATION:

If the General Assembly chooses to re-establish the masseurs/masseuses program it should consider amending Section 40-29-100 and 40-29-110 to allow opposite sex massage and to allow businesses to operate on Sunday and before 10:00 A. M.

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RESPONSE:

The Division is opposed to allowing opposite sex massages. It is in our opinion that opposite sex massages certainly give rise to suspect activities other than massages or at a minimum, present an environment that such events might occur. We would have no problem if the General Assembly felt in its wisdom that it was in the best interest of all to allow the business to operate on Sunday and before 10:00 A. M. We would have concern if such type businesses were allowed to operate on a twenty-four (24) hours basis because again it would give rise to suspect of activities other than those of normal health assistance.

RECOMMENDATION:

In accordance with Act 608 of 1978, the General Assembly should consider terminating the Masseurs/Masseuses program as administered by SLED.

The General Assembly should consider clarifying Section 4-9-10 Et. Seq. as to the county's exercise of police power and the regulation of massage parlors.

* (See Page 8)

RESPONSE: (Item # 1)

The South Carolina Law Enforcement Division feels that the statutes covering masseurs/masseuses could best be regulated by local governments with an inspection program conducted by the South Carolina Department of Health and Environmental Control; however, we will address each of your recommendations as if the General Assembly will not choose to follow the above noted recommendations.

RESPONSE: (Item # 2)

We agree with your recommendation.

RECOMMENDATION:

The General Assembly should consider amending Section 16-15-90 of the South Carolina Code of Laws to include a prohibition against sexually oriented massage.

RESPONSE:

We agree with your recommendation.

RECOMMENDATION:

Should the General Assembly choose to re-establish the masseurs/masseuses program it should consider amending Section 40-29-50 to require a diploma from an accredited School of Massage or one year previous experience as a masseur/masseuse.

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RESPONSE:

We would agree with the above noted recommendation so long as it falls within the wisdom of the South Carolina General Assembly.

RECOMMENDATION:

Should the masseurs/masseuses program be re-established SLED should develop policies and procedures for inspection of licensees.

Inspection records should be maintained. These records should include the inspection date, licensee inspected, problems found, date of resolution, follow-up and signature of SLED staff.

RESPONSE:

We would agree with the above noted recommendation so long as it falls within the wisdom of the South Carolina General Assembly. However, SLED feels that this type of inspection falls best in the expertise of the South Carolina Department of Health and Environmental Control.

RECOMMENDATION:

Should the General Assembly choose to re-establish the masseurs/masseuses program, it should consider amending Section 40-29-50 and 40-29-140 to require all persons administering massages to obtain a health certificate from either a medical doctor or the County Health Department prior to initial licensure.

RESPONSE:

We would agree with the above noted recommendation so along as it falls within the wisdom of the South Carolina General Assembly.

RECOMMENDATIONS:

Should the General Assembly choose to re-establish the masseurs/masseuses program it should consider amending Section 40-29-50 to require that the County or City Council which has jurisdiction over the location where the business is to operate should consider the application for a masseur/masseuse license in a Council meeting open to the public.

The licensing of masseurs and masseuses should be reflected in the Regulatory Department's address and phone listings in the public and state telephone directories.

RESPONSE: (Item # 1)

We would agree with the above noted recommendation so along as it falls within the wisdom of the South Carolina General Assembly.

RESPONSE: (Item # 2)

See previous paragraph that addresses phone listings.

RECOMMENDATION:

Should the masseur/masseuses program be re-established the Regulatory supervisor should develop written policies and procedures to handle complaints. A central complaint log should be established. Areas that should be addressed in the log are complainant, nature of complaint, date of complaint and means of contact, action taken and follow-up. Complainants should be formally apprised of case resolution.

RESPONSE:

We would agree with the above noted recommendation but would suggest including DHEC involvement as noted in a previous paragraph.

RECOMMENDATION:

If the General Assembly chooses to re-establish the masseurs/masseuses program it should consider clarifying individuals or establishments required to be licensed under the program.

RESPONSE:

We would agree with the above noted recommendation so long as it falls within the wisdom of the South Carolina General Assembly.

- * You will note that we concurred with your recommendation that Act 281 should be terminated (Sunset) with regard to SLED's administrative responsibilities relative to the Masseurs/Masseuses portion of that statute. We feel that this calls for additional explanation, which is as follows:

Act 281, as is currently written, should be allowed to terminate (Sunset) and the problem of masseurs/masseuses and other activities that could and possibly do occur in such health clubs and spas that utilize the services of masseurs/masseuses, should be readdressed either in a special statute written in a less confusing manner than Act 281 or the problems that could and do exist in these types of businesses could be addressed by amending the statutes prohibiting prostitution, masturbation, and other sex offenses.

POLYGRAPH AND LICENSING PROGRAM

RECOMMENDATION:

SLED should develop policies for periodic inspection of Polygraph Examiners.

Inspection records should be maintained. These records should include the inspection date; examiner inspected; problem/s found; date of resolution; follow-up and; signature of SLED staff.

RESPONSE:

This Department has created a form to use for inspections, that reflects all information set forth in the recommendation. (See Attachment # 4).

RECOMMENDATION:

The program should maintain a policy and procedures manual.

RESPONSE:

See previous paragraph that addresses SLED's Policy and Procedures Manual.

RECOMMENDATION:

The General Assembly should consider amending Section 40-53-10 of the South Carolina Code of Law to establish an Advisory Council for the polygraph licensing program with representation from the public, industry and law enforcement.

The regulatory function should be reflected in the Polygraph Section's address and phone listings in the public and state telephone directories.

RESPONSE: (Item # 1)

See previous paragraph that addresses our objection and recommendations with regard to Boards and/or Advisory Councils. Quarterly, the South Carolina Polygraph Examiners Association has meetings and open discussions on polygraph laws and practices regarding the State of South Carolina, in which input from the Polygraph community, as well as the general public, can be expressed. The Agency is of the opinion that due to the technical aspect of the polygraph field and the jargon used, a public person who was unfamiliar with such jargon, would be of little or no aid in the regulation of the Polygraph field.

RESPONSE: (Item # 2)

See previous paragraph that addresses phone listings.

RECOMMENDATION:

The program should develop policies and procedures to handle complaints. Procedures should include a standard form and log to record all complaints and inquiries. Information that should be included in the log are complainant; nature of complaint; date of complaint, and means of contact; action by the program and; follow-up.

Mr. Schroeder
Page 10
July 31, 1984

RESPONSE:

See previous paragraph concerning policy and procedures manual.

There is a centralized complaint file maintained by the Polygraph Office. This file was shown to Ms. Anderson. Every complaint file against a South Carolina Polygraph Examiner is filed in this folder. We agree that a form and log used to document complaints and inquiries would be a helpful management tool to this office. (See Attachments # 5 and # 6).

RECOMMENDATION:

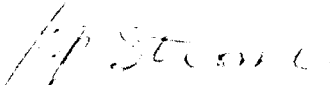
The General Assembly should consider specifying acceptable types of "active investigative experience" for licensure qualification.

RESPONSE:

The South Carolina Law Enforcement Division has, rightfully or wrongfully, always considered active investigative experience to be literally interpreted. That is to say that a person must be experienced as a detective or an investigator where the art of interrogation (debriefing) is practiced on a case by case basis rather than experience being that of a uniformed police officer, whose primary duty is the control of the movement of the general public. The Agency would welcome any strengthening of the law itself or the interpreting of the verbage therein. We would be opposed to weakening the law in any manner in that it is felt that the State of South Carolina has one of the best, if not the best, statutes covering polygraph use and polygraph examiner qualifications within the United States.

We submit the above for whatever action you deem necessary and appropriate and ask that you call on us at anytime we can be of assistance, for it is our desire to work with you in all matters of mutual interest.

Yours very truly,



J. P. Strom, Chief
South Carolina Law Enforcement Division

JPS/dwh
Attachments

Mainly

Paul Moran

SUBJECT: Background Investigation

Ref: Otis C. Carter, III

No.: CWP 1759

Attached is the application of the above referenced individual who is requesting a

- | | | | |
|-----------------------------|-------------|------------------------------------|-------------|
| 1. Concealed Weapon Permit | <u>X</u> | 5. Private Detective Business Lic. | <u> </u> |
| 2. Gun Dealer's License | <u> </u> | 6. Private Security Business Lic. | <u> </u> |
| 3. Massage Parlor License | <u> </u> | 7. Combination (5 & 6) | <u> </u> |
| 4. Premise Security License | <u> </u> | | |

Please conduct a background investigation and report your findings by completing this form.

The criminal records section of the law enforcement agencies listed below were contacted and indicated results are as follows:

<u>AGENCY</u>	<u>DATE CONTACTED</u>	<u>RESULTS</u>
State Law Enforcement Division	<u>11-2-81</u>	Neg <u>✓</u> See Attached <u> </u>
County Sheriff's Office	<u>11-25-81</u>	Neg <u>✓</u> See Attached <u> </u>
City Police Department	<u>12-2-81</u>	Neg <u>✓</u> See Attached <u> </u>

Other persons/agencies contacted:

NAME:

DATE:

COMMENTS:

NARRATIVE:

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

TYPE OF REPORT: <input type="checkbox"/> Opening <input type="checkbox"/> Progress <input type="checkbox"/> Closing (Inactive Status) <input type="checkbox"/> Final <input type="checkbox"/> Crime Scene Processing only	STATUS: <input type="checkbox"/> Active <input type="checkbox"/> Awaiting Court Action <input type="checkbox"/> Closed by Arrest <input type="checkbox"/> Insufficient Info. <input type="checkbox"/> Unfounded	LAB EXAMS AND LAB NUMBERS: <input type="checkbox"/> Chemical No: <input type="checkbox"/> Forensic No: <input type="checkbox"/> Polygraph No: <input type="checkbox"/> Other No:	CASE FILE# _____ NCIC# _____ CHARACTER: / / / CHARACTER DETAIL: _____ _____
AGENT(S) ASSIGNED: (Print or Type) _____ / _____ / et al			

Complaints other than mail from Headquarters:

☐ Telephonic ☐ Personal ☐ Mail

Received from: _____

Address: _____

Date received: _____

Date of Crime: _____

Location of Crime (Jurisdiction): _____

(City and County) _____

SUSPECT(S): _____

VICTIM(S): _____

Person(s) Interviewed:

	<u>Name</u>	<u>Address</u>	<u>Date</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____

SLED CHARACTER CODE NUMBERS LISTED ALPHABETICALLY

1. Abortion	11. Conspiracy	21. Forgery	31. Oper. Nuisance
2. Abduction	12. Death Inv.	22. Fraud	32. Robbery
3. Administrative	13. Delinquent	23. Gambling	33. Rec. St. Goods
4. Arson	14. Desertion, N/Sup.	24. Housebreaking	34. Safe Cracking
5. Assault & Battery	15. Disorderly Conduct	25. Inter W/Officer	35. Sex Crimes
6. Blue Law	16. Destruction of Prop.	26. Kidnapping	36. Traffic
7. Breach of Peace	17. Drug Violation	27. Larceny	37. Trespassing
8. Bribery	18. Election Law	28. Vio. of Liq. Law	38. Vehicle
9. Burglary	19. Escapee	29. Obt. False Pretense	39. Weapon
10. Civil Rights	20. Ethics	30. Official Misconduct	40. Worthless Checks
			41. Other

General Instructions:

This report should be submitted for all investigations and with all statements and related material. All information on this form is vital in order that the Case File Section may properly process Case reports. This report does not replace a narrative report when such is in order.

SUMMARY REPORT OF CASE # _____

Final Disposition: Name(s) _____

Type of Court: () General Sessions () Magistrate's Court Judge/Magistrate _____

Date Tried: _____ County: _____

Offense: _____

Charge was Violation of Section: _____

Sentence: _____

Signature: _____

Date: _____

COMPLAINT NUMBERS USED

<u>NUMBER</u>	<u>SUSPECT</u>	<u>AGENT ASSIGNED</u>	<u>DATE ASSIGNED</u>
RCT83001	Spartan Detective Agency	Greer	8/19/83
RCT83002	Fairfield Ocean Ridge	Helmly	8/29/83
RCT83003	American Security	Rogers	9/8/83
RCT83004	Charles Porter DA: 582	Rogers	9/8/83
RCT83005	Erle Halliburton	Seaborn	10/3/83
RCT83006	Rhett Sanders	Webber	10/4/83
RCT83007	Otasco	Rogers	10/26/83
RCT83008	Coastal Security	Leath	10/30/83
RCT83009	Highie Frye (Guns & Things)	Long	10/30/83
RCT83010	McDonalds	Shelton	12/6/83
RCT83011	King Jewelry	Shelton	12/20/83
RCT84012	Pinkerton's-Edward Baird	Rogers	1/4/84
RCT84013	State Farmers Market	Shelton	1/13/84
RCT84014	Crowe's Incorporated	Sloan	1/26/84
RCT84015	Rolin Investigation Service	Shelton	1/31/84
RCT84016	Luther Wallace	Shelton	2/2/84
RCT84017			
RCT84018	Carolina Detective Agency	Dollard	2/7/84
RCT84019			
RCT84020	Bill Blackherst (US Shelter)	Shelton	2/26/84
RCT84021	Robert Spartan Detective	Shelton	3/4/84
RCT84022	Mariner Cay Racket	Hair	3/14/84
RCT84023	Freddie Wilbanks	Rogers	3/17/84
RCT84024	Phillip Lilly & Ted Landreth	Rogers	3/21/84
RCT84025	Intra-Tech Security	Shelton	4/12/84
RCT84026	Barton Protective Agency	Shelton	5/3/84
RCT84027	Advance Security	Shelton	5/23/84
RCT84028	Shell Investigations	Rogers	6/1/84
RCT84029	Delores S. Bradley	Shelton	6/5/84
RCT84030	Knights Inn Motel	Shelton	6/22/84
RCT84031	Kellett Park	Rogers	6/22/84
RCT84032	National Detective Agency	Long	7/10/84
RCT84033	John T. Shaw (CWP)	Sloan	5/29/84

COMPLAINT FORM

Date received: _____ Complaint rsvd by: _____

Telephone # _____ Time _____

Interviewed by _____ Time _____

Correspondence _____

COMPLAINANT

Name _____

Street or Post Office Box _____

City, State, Zip _____

Telephone (Home) _____ Work _____

SUBJECT OF COMPLAINT (Company, Business, Person)

Name _____

Street or Post Office Box _____

City, State, Zip _____

SUMMARY OF COMPLAINT:

AGENT _____ Date Investigated _____

SUMMARY OF INVESTIGATION:

ACTION WARRANTED/UNWARRANTED _____ Yes _____ No

REASONS:

Agent, South Carolina Law Enforcement Division

Section I - Definitions

A. Hearing Officer - a hearing officer may be an employee of SLED or other agency of the State appointed by the Chief of SLED for the purpose of conducting a hearing.

B. Hearing - a hearing is a trial-type proceeding where there is to be a determination made pursuant to the licensing authority of SLED.

C. License - a license includes any permit, certificate, approval, registration, charter or similar form of permission required by law.

D. Licensing - licensing includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of an license.

E. Party - party means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

F. Person - person means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Section II - Hearing

A. The hearing shall be conducted by the hearing officer appointed or authorized by the Chief of SLED to conduct the hearing.

B. All testimony given at the hearing shall be under oath administered by the hearing officer.

C. The moving or complaining party shall present his evidence or testimony first. After the evidence and testimony of the complaining or moving parties have been received, all other parties shall be allowed to present their evidence or testimony. The staff shall make its presentation last. All parties, other than the party introducing the testimony, shall be allowed to cross-examine any witness immediately after his testimony has been received and there shall be opportunity for all parties to reply.

D. All parties, counsel, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in the Courts of this State. Where such decorum is not observed, the hearing officer may take such action as he finds appropriate.

E. The hearing officer may cross-examine any witness and may make requests of any party with regard to the submission of additional information, records, exhibits or photographs.

F. All proceedings in a pending case shall be recorded by sound or be officially reported by a stenographer appointed for that purpose. The oral proceedings or any part thereof shall be transcribed upon request of any party. If there is no such request, the oral proceedings may be presented to the Chief of SLED in summary form to accompany the determination of the hearing officer.

Section III - Initiation of a Hearing

A. To institute hearing proceedings the investigating agent shall prepare a concise statement of charges including the legal authority and jurisdictions under which the hearing is to be held and the particular sections of statutes and rules involved, together with the time and place of the hearing, to serve as notice of the hearing. The notice shall include the names of the persons charged.

B. The notice of the hearing shall be served upon the person(s) charged, either by personal service or certified mail with return receipt requested, signed by addressee only.

C. Whether served by personal service or mail, it shall be done sufficiently in advance of the time set for the hearing so that the person(s) charged is given no less than thirty (30) days to respond.

D. If personal service is made upon the person charged, the investigating agent shall give the original notice of the hearing to that person and obtain written acceptance of such by signature of that person on a duplicate copy of the notice of hearing. In addition, the investigating agent will record the time, date of service, and his/her signature on the duplicate copy of the notice of hearing.

E. Whether by personal service or certified mail the person charged will be advised with respect to:

1. Nature of suspension and revocation proceedings.
2. The right to have counsel present at the hearing and that counsel may be a lawyer or any other person.
3. Right to have witnesses and records presented during the hearing.

F. Prior to or during the hearing, the hearing officer may issue subpoenas for the attendance and the giving of testimony by witnesses or for the production of books, papers, documents or any other relevant evidence. This may be done upon his own motion, upon request by the investigating agent or upon request by the person charged.

G. A hearing should not be convened simply to withdraw charges. In the event the investigating agent uncovers additional evidence to make him/her believe the charges are not warranted, or the charges were not properly served, or there is a last minute decision to enter into a voluntary agreement, then the investigating agent shall inform the hearing officer that the anticipated hearing will not take place.

Section IV - Procedure During Hearing

A. In absentia - Any person, being duly served with the original notice of the hearing, that fails to appear at the time and place specified for the hearing, shall have a notation to that effect made in the record and the hearing will be conducted in absentia. The hearing officer shall also cause to be placed in the record all facts concerning the issuance and service of the notice of hearing and the statement of charges.

B. Change of Venue - After charges have been served by way of notice of the hearing, any request to have the hearing held at a time or place different from that specified in the notice of the hearing will be submitted in writing to the hearing officer. Unless notified by the hearing officer, the hearing will be held as scheduled.

C. Withdrawing Charges - if, at the commencement of the hearing, newly discovered evidence leads the investigating agent to believe that he/she has incorrectly charged a person, the agent may make a motion to the hearing officer that the charges be withdrawn.

D. Additional Charges/Amendment of Charges - the hearing officer may, on his/her own motion or the motion of the investigating agent or person charges, permit the amendment of charges, additional charges, or to correct.

Section V - Determination

A. On the basis of the evidence presented, the hearing officer may issue the determination as an initial decision or may refer the record to the Chief of SLED without a written recommendation. If an initial decision is prepared it shall consist of a written statement to the Chief of SLED recommending affirmation, modification or denial of the administrative decision involved. The hearing officer shall deliver by certified mail to the parties the initial decision, including findings of fact and conclusions of law as well as the reasons for such recommendation in the matter. The determination shall conform to the criteria set forth in Title 2, Chapter 23, Article 3 of the Code of Laws of South Carolina 1976 as amended.

B. After a determination is made by the hearing officer, any party may apply to the Chief of SLED for a review of the determination of the hearing officer prior to a final decision in the matter by the Chief.

However, application must be submitted in writing within fifteen (15) days of receipt of the determination stating specifically the grounds of objection to such determination.

C. On the basis of the complete record of proceedings and testimony and evidence presented before the hearing officer his or her determination shall be affirmed, modified, or set aside by the Chief of SLED in a final decision on the matter.

Section VI - Time Requirements

When the time prescribed in these rules for doing any Act expired on Sunday or legal holiday, such time shall extend to, and include, the next succeeding day that is not a Sunday or legal holiday. The Chief or the hearing officer may grant reasonable extensions of time to meet the filing deadlines specified herein.

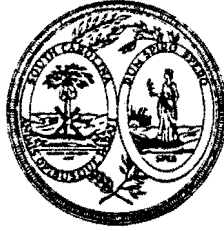
Section VII - Appeal

Any party aggrieved by a final decision of the Chief of SLED, may appeal such decision to the proper court pursuant to applicable state law.

State of South Carolina
Law Enforcement Division

ATTACHMENT # 4

RICHARD W. RILEY
Governor



J. PRESTON STROM
Chief

P.O. Box 21398

Phone 758-6000

Columbia, S.C. 29221

SOUTH CAROLINA POLYGRAPH EXAMINERS INSPECTION FORM

EXAMINER: _____ DATE: _____

ADDRESS: _____

INSPECTIONS CONDUCTED

TYPE OF INSPECTIONS: _____

INSPECTION FINDINGS

DATE: _____

NO DEFICIENCY FOUND: _____

DEFICIENCY FOUND: _____

ACTION RECOMMENDED: _____

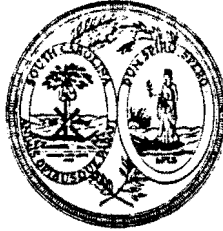
FOLLOW-UP: _____

Signature: _____

State of South Carolina
Law Enforcement Division

ATTACHMENT # 5

RICHARD W. RILEY
Governor



J. PRESTON STROM
Chief

P.O. Box 21398

Phone 758-6000

Columbia, S.C. 29221

SOUTH CAROLINA POLYGRAPH COMPLAINT FORM

Complaints Received:

Complaint Number: _____

() Telephonic

() Personal

() Mail

Received From General Public: _____

Received From Other Licensees: _____

Referred From Other Agencies: _____

Institutions: _____

General Complaints: _____

COMPLAINANT NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

DATE RECEIVED: _____

NATURE OF COMPLAINT: _____

DISPOSITION OF COMPLAINT:

HEARINGS: _____

INVESTIGATIONS: _____

REFERRED ELSEWHERE: _____

DISCIPLINARY ACTION: _____

NO ACTION TAKEN _____

COMPLAINT PENDING: _____

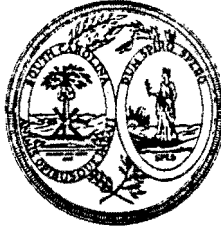
BOARD REVERSED: _____

FOLLOW-UP: _____

Signature: _____

Date: _____

Law Enforcement Division



RICHARD W. RILEY
Governor

J. PRESTON STROM
Chief

P.O. Box 21398

Phone 758-6000

Columbia, S.C. 29221

SOUTH CAROLINA POLYGRAPH COMPLAINT LOG

DATE

COMPLAINANT NAME

FORM NUMBER

(This log is an indexing reference establishing date of complaint, complainant's name, and complaint number issued. The primary purpose is to provide an effective mechanism for accessing detailed complaint information).

CERTIFICATION PROGRAM FOR PUBLIC LIBRARIANS

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INTRODUCTION

Public Librarians are certified in South Carolina, as part of a broader funding mechanism for disbursing State Aid to county libraries. The State Aid Program provides funding to county libraries for books, equipment and other materials, bookmobiles, library audits and salary supplements for professional staff (see p. 117). Funds for salary supplements depend upon certification of librarians. The question of impact of termination (#2) was applied to the Certification Program and not to the State Aid Program, as per Act 608 of 1978.

After reviewing its operations and regulations, the Audit Council has determined that the Certification Program should be continued. In the absence of this Program, the State Aid Program would need to be revised, such that verification of staffing standards would be conducted by individual libraries, and reported to the State Library. Due to the efficiency of the Program, and low cost to the State, it is difficult to determine any advantage in termination.

The Certification Program does not regulate the librarian profession nor restrict use of the title "librarian." Additionally, the Program operates solely in the public sector. Inclusion of this Program in the schedule of sunset reviews is questionable, since it does not exercise a regulatory function.

BACKGROUND AND HISTORY

The Certification Program for Public Librarians was authorized in 1935 by Act 157; due to a reported staff shortage at the State Library, the Program was not established until 1962. The purpose of the Program was to encourage public libraries to improve personnel standards. The Program certifies full-time public librarians based upon education and experience. Since 1965, salary supplements for certified librarians have been available through the State Aid Program for Public Libraries (see p. 117).

The State Library Board delegates administration of the Certification Program to the Field Services Division of the South Carolina State Library. One member of the Field Services staff is responsible for the program. This staff member reviews applicant credentials and determines whether a certificate is awarded. The grades and qualifications of certification for public librarians are as follows:

1. Professional - A Master of Library Science (MLS) degree from a school accredited by the American Library Association (ALA) with three years of recent professional experience. A professional certificate need not be renewed if the holder is continuously employed in a South Carolina public library.
2. Provisional Professional (PR) - A MLS degree from an ALA accredited institution. After three years of experience, the certificate can be upgraded to Professional.
3. Preprofessional (PP) - A graduate of a four-year accredited school with completion of not less than 18 semester hours of library science.

4. Provisional Preprofessional (PPP) - A bachelor's degree from an accredited school. Upon completing 18 hours in library science, the certificate can be upgraded to Preprofessional.
5. Prior Service (PS) - A librarian and professional assistant employed on December 31, 1961 who applied for a certificate before December 31, 1962. This grade of certificate is no longer issued.

A certificate may be revoked if a librarian either changes from a full-time work status or becomes unemployed. Upon resumption of full-time work, a certificate can be reinstated.

A total of 204 public librarians are certified in South Carolina. According to 1983 Certification Program records, there were 103 professional, 62 provisional professional, 19 preprofessional, 15 provisional preprofessional and five "prior service" librarians.

Twenty-eight states have public librarian certification laws. Of these 28 states, four are inactive (Arkansas, Montana, North Dakota and Tennessee). Twenty-two states and the District of Columbia do not require certification. South Carolina and four other southeastern states (Georgia, Kentucky, North Carolina and Virginia) use certification as a funding mechanism. Alabama, Florida and Mississippi have no public librarian certification law, and as noted, Tennessee's law is inactive.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Certification Program involves no cost to registrants for applying or renewing certification. Since the Program does not regulate the librarian profession and does not charge fees or examine public librarians, it has no impact on the cost of goods and services. However, librarians who elect to upgrade their education may bear associated costs.

- (2) WHAT ECONOMIC, FISCAL OR OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

As noted earlier, public librarians are certified in South Carolina in order to fulfill certain requirements of the State Aid Program to public libraries. The State Aid Program is discussed in more detail below.

Certification Required for State Aid

The State Aid Program was established in 1943 to upgrade the State's library system. State Aid for salary supplementation was enacted in 1965. Supplements were to provide incentives for professional staff.

Section 75-1 (D3) of the 1976 South Carolina Regulations states:

Any library receiving State Aid shall be legally established by a legally appointed Board and shall employ as soon as possible in professional and preprofessional positions librarians meeting the certification and staffing standards approved by the State Library Board.

The purposes of Certification by the State Library, as presented in the FY 61-62 Certification Plan, were to aid library boards and librarians in selecting competent personnel, to provide assurance to taxing bodies that public funds are spent for quality service, and to improve the status of librarianship as a profession.

South Carolina's 46 counties receive State Aid through the 39 library systems. Funding is approved annually by the State Library. To qualify for State Aid, a library must be legally established, have a legally established board, provide county-wide service, and meet certain other criteria. Libraries can use State Aid to purchase books and audiovisual materials, to purchase or lease equipment, to operate and maintain bookmobiles, to audit county libraries and to supplement salaries of certified professionals. The State Library's Field Services Division monitors compliance of State Aid Regulations.

In FY 83-84, State Aid was administered at 75¢ per capita. The State Aid allocation for FY 84-85 is \$1.00 per capita. For the last three fiscal years, approximately \$2 million a year was allocated to counties, with salary supplements comprising approximately 29%. The amount of State Aid allocated to counties, and the percentage of each allocation used for salary supplements, is presented in Appendix 1. From FY 62-63 to FY 72-73, 290 librarians had been certified, with 134 active in the State. As of FY 82-83, 675 librarians had received certification, with 204 active in the State. The Program, therefore, has drawn more

qualified librarians into service, and some librarians have upgraded their education for Certification.

(3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Certification Program for Public Librarians is administered by the South Carolina State Library, and does not have a separate operating budget. It is estimated that one staff member employed by the Field Services Division of the South Carolina State Library spends approximately one day per month or 12 days annually in handling certification operations. The yearly cost of the Program is approximately \$1,147 based on this staff member's time.

The Certification Program's cost for postage and printing is absorbed by the State Library and is reported as minimal. Applications and form letters are printed as needed. The supply of certificates, printed at the inception of the Program in 1962, is expected to last until 1990.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAM OR FUNCTION OF THE AGENCY UNDER REVIEW.

The Certification Program for Public Librarians issues certificates based on education and experience, and verifies certification for State Aid salary supplements. The Audit Council reviewed personnel

files, salary supplement forms, and Program rosters and found that the Program is administered efficiently and consistently.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

Public participation is not applicable in Certification Program operations.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Certification Program does not duplicate the services, functions and programs of any other State, federal or local government entity.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

Processing public complaints is not applicable to the Certification Program because the Program does not regulate the librarian profession.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES.

The Certification Program is regulated only by the statutes and regulations enacted by the State of South Carolina. A review of applicable statutes and Program operations showed that the Program is in compliance.

APPENDICES

APPENDIX 1

STATE AID TO COUNTY LIBRARIES

FY 80-81 THROUGH FY 82-83

	<u>FY 80-81</u>		<u>FY 81-82</u>		<u>FY 82-83</u>	
	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>	<u>\$</u>	<u>%</u>
Salary Supplements	\$ 509,051	26	\$ 662,397	29	\$ 684,681	31
Bookmobiles, Materials and Equipment	1,433,836	74	1,625,776	71	1,529,956	69
Total Appropriated Funds	<u>\$1,942,887</u>	100	<u>\$2,288,173</u>	100	<u>\$2,214,637</u>	100
(Per Capita)	(.75)		(.73)		(.71)	

Source: State Aid Forms and State Library Annual Reports FY 80-81 through
FY 82-83.

APPENDIX 2
REQUIREMENTS AND NUMBER OF CERTIFIED LIBRARIANS
AS OF DECEMBER 31, 1983

<u>Title</u>	<u>Requirements</u>	<u>Number</u>
PROFESSIONAL	Master's from ALA accredited school, 3 years of experience	103
PROVISIONAL PROFESSIONAL	Master's from an ALA accredited school	62
PREPROFESSIONAL	Bachelor's from an accredited school having not less than 18 hrs. of library science	19
PROVISIONAL PREPROFESSIONAL	Bachelor's from an accredited school	15
PRIOR SERVICE	Librarian or Professional Assistant employed on December 31, 1961, applying before December 31, 1962	<u>5</u>
		<u>204</u>

Source: Certification Program Regulations and Roster

APPENDIX 3

LEGISLATIVE AUDIT COUNCIL'S SURVEY OF SOUTHEASTERN STATES:

CERTIFICATION FOR PUBLIC LIBRARIANS

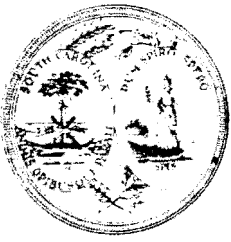
<u>State</u>	<u>Certification Act</u>	<u>Fees</u>	<u>Exam</u>
Alabama	No ¹		
Florida	No ¹		
Georgia	Yes	Yes	No
Kentucky	Yes	Yes	No
Mississippi	No ¹		
North Carolina	Yes	No	No
South Carolina	Yes	No	No
Tennessee	Yes ²	N/A	N/A
Virginia	Yes	Yes	Yes ³

¹Minimum education standards are used.

²Inactive Law.

³Exam for persons without Master's of Library Science (MLS).

APPENDIX 4



The South Carolina State Library

1500 Senate Street

P. O. Box 11469

Columbia, South Carolina 29211

PHONE 758-3181

BETTY E. CALLAHAM
STATE LIBRARIAN

July 6, 1984

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

On July 5, Mrs. Alice Nolte of the State Library's staff and I reviewed the draft evaluation of the Certification Program for Public Librarians as prepared by the staff of the Legislative Audit Council. We agree with the findings of the study and have no recommendations for changes. I would especially urge your consideration of the staff's comment that inclusion of the certification program in the schedule of sunset reviews is questionable since it does not exercise a regulatory function. Certification of librarians is an administrative service provided by the State Library to the county library boards to enable them to meet the requirements of the State Aid program. It is not a licensing function. If it would be possible to remove this from the sunset review procedure, it would be a timesaving factor for both of us.

Miss Priscilla Anderson and Miss Marilyn Edelhoeh were very competent and cooperative in doing this review. We appreciate the professional manner in which it was carried out.

Sincerely yours,

A handwritten signature in cursive script that reads "Betty E. Callahan".

Betty E. Callahan
Librarian

BEC:vlm

BOARD OF REGISTRATION FOR FORESTERS

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INTRODUCTION

After reviewing the operations of, and laws pertaining to, the Board of Registration for Foresters, the Audit Council concludes that the Board does not meet the criteria for continuation. To justify continuation, evidence must be established that a significant risk to the health, safety and/or welfare of the citizens of South Carolina would result in the absence of the Board.

BACKGROUND AND HISTORY

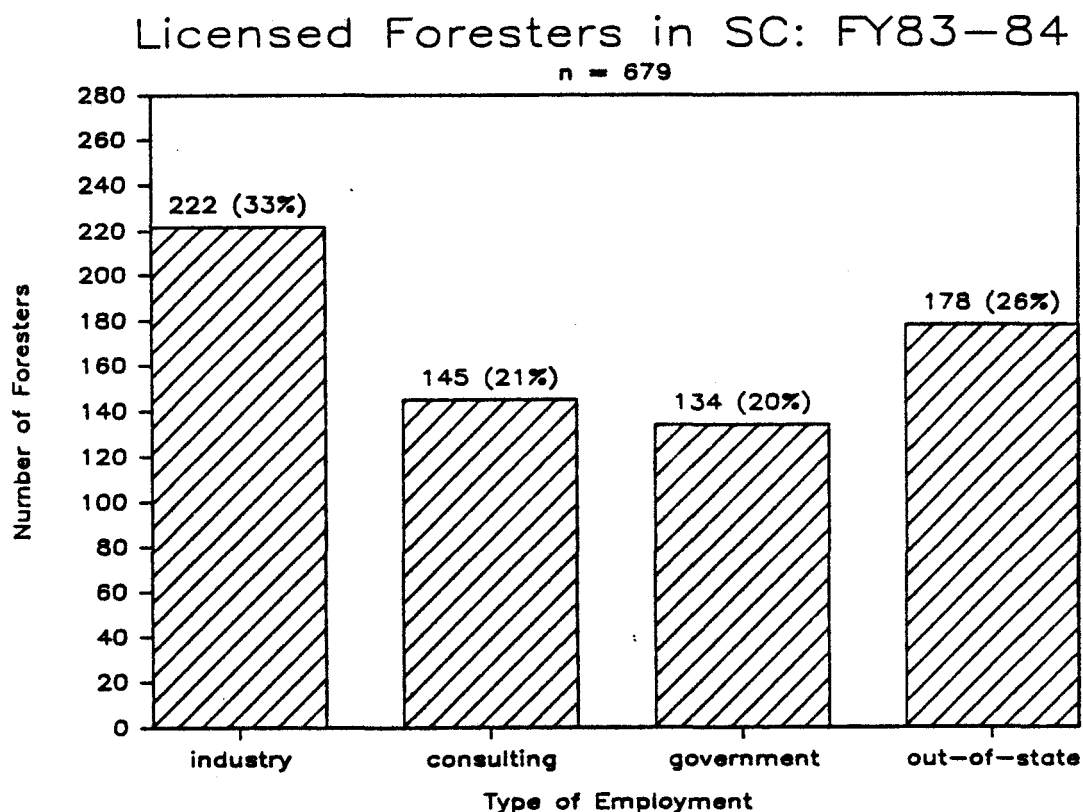
The registration of foresters in South Carolina began in 1962. Act 367 of the 1961 Acts and Joint Resolutions of South Carolina created the Board of Registration for Foresters to administer the law and organize the licensing process. The law restricts the use of the title "registered forester" and limits the practice of forestry to those individuals licensed by the Board, with several exceptions. Included in the Acts' exemptions from registration requirements are private landowners engaging in forestry practices on their own land, and individuals they hire to manage their own forest land. Professional employees of public agricultural agencies may provide forestry information, education and conservation planning without registration, as long as such employees do not represent themselves as professional foresters. Unlicensed individuals may practice under the supervision of a registered forester.

The Board of Registration is composed of five professional foresters, appointed by the Governor for five-year terms. The Board members represent the South Carolina Commission of Forestry, the United States Forest Service, the Clemson University School of Forestry, industry foresters and consulting foresters. Meetings of the Board are held semi-annually, in April and September. The Board is empowered to: adopt and amend by-laws and rules of procedure necessary for proper performance of its duties; to license as registered foresters applicants who qualify with requirements specified in Section 48-27-130 of the South Carolina Code of Laws; to prescribe examination procedures; and to revoke the license of any registrant found guilty by the Board of gross negligence, incompetency, or misconduct in the practice of forestry.

Procedures for investigation and hearings of charges against foresters, are described in Section 48-27-200.

The Board of Registration issued new or renewed licenses for approximately 679 foresters in FY 83-84, 74% of whom work in South Carolina. Based on an analysis of the 1984 roster, most (222) foresters in South Carolina work for industry, while 145 work as consultants, and 134 work for the State or federal governments (see Figure 1).

FIGURE 1



Qualifications for registration include graduation from a Board-approved, four-year forestry curriculum and two years forestry experience, or passage of a written examination reflecting knowledge equivalent to a four-year degree and six years of experience. Applicants must also provide names of five references, of whom three or more are foresters with personal or professional knowledge of the applicants' forestry experience. Individuals licensed to practice forestry by other states or countries, whose requirements are commensurate with those of South Carolina, qualify for reciprocity licensure.

The profession of forestry is concerned with "the scientific management of forests for the continuous production of goods and services," and involves the care, harvesting and regeneration of tree crops. Foresters may provide the following types of assistance to landowners: advice regarding the management needs of timber tracts to promote healthy growth; protection from fire, insects and disease; control of sediment and erosion; and promotion of conservation and regeneration. Foresters may be involved in all phases of management, or with specific concerns such as appraisal of timber tracts, procurement of timber tracts, and/or the handling of timber sales.

Table I provides a summary of licensure requirements in the 12 states which currently provide regulation of the forestry profession. (Since 1979, two states, New Hampshire and Florida, have terminated their boards governing licensure of foresters.) The amount of wooded acreage in each of the 12 states owned by private, nonindustrial landowners is presented, as well as the value of lumber, paper and related industry products in each of these states.

TABLE 1

STATES WHICH LICENSE FORESTERS: SUMMARY OF LICENSURE REQUIREMENTS, AMOUNT OF PRIVATE,
NONINDUSTRIAL FOREST LAND (1977) AND VALUE OF LUMBER, PAPER AND
RELATED INDUSTRY PRODUCTS, (1980)

State	(1983) Summary of Licensure Requirements ¹	(1977) Amount of Private NonIndustrial Forest Land (in 1,000's of acres)	Rank in U.S.	(1980) Value of Lumber, Paper and Related Industry Products (in millions \$)	Rank in U.S.
Alabama	B.S. in Forestry + Passage of exam + 2 yrs. experience	16,119.4	2	4046.6	11
Arkansas	B.S. in Forestry (or) Passage of exam + 3 yrs. experience (or equivalent) + references	11,282.0	8	1260.3	25
California	B.S. in Forestry + Passage of exam + 3 yrs. experience (or equivalent)	4,941.0	23	9387.7	1
Georgia	4 yrs. approved college + 2 yrs. experience	18,949.3	1	5943.4	5
Maine	B.S. in Forestry or 8 yrs. experience or a combination equal to 8 yrs.	8,240.2	18	3319.6	14
Maryland	B.S. in Forestry + 2 yrs. experience	2,140.8	33	934.1	27
Michigan	B.S. in Forestry + 2 yrs. experience + 3 references	10,102.4	12	3254.7	15
Mississippi	B.S. in Forestry (or 8 yrs. of experience) + Passage of exam	11,831.8	6	2331.6	24
North Carolina	B.S. in Forestry (or) Passage of exam + 2 yrs. experience + 5 references	15,664.6	3	4291.8	9
Oklahoma	B.S. in Forestry + 2 yrs. experience + "must be a competent forester"	2,763.9	31	859.8	28
South Carolina	B.S. in Forestry + 2 yrs. experience or passage of exam + 6 yrs. experience + 5 references	9,074.1	15	2630.6	23
West Virginia	B.S. in Forestry + 8 yrs. experience	9,483.2	14	402.6	38

¹

Due to space considerations, all alternatives for licensure in each state are not presented.

Sources: Society of American Foresters 1983 Survey Data, U.S. Department of Agriculture. An Analysis of the Timber Situations in the U.S. 1952-2030, and U.S. Department of Commerce, Bureau of the Census, 1980 Annual Survey of Manufacturers M80 (AS)-6.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Since the Board of Registration for Foresters does not regulate fees charged by licensees for their services, it has no direct influence on consumer prices. The costs of regulation to foresters are relatively low. The Board registration fee is \$15 initially, and the yearly renewal fee is \$8.

- (2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The Audit Council has been unable to establish evidence that a serious risk to the health or safety of the citizens of South Carolina would result in the absence of the Board of Registration for Foresters. Arguments have been made that termination may impair the economic well-being of some private, nonindustrial landowners in the State, but there is a lack of evidence to support these arguments. Therefore, the Audit Council concludes that the Board of Registration for Foresters does not meet the criteria for continuation.

Introduction

Sixty-five percent (12.5 million acres) of South Carolina's land is forested; 73% of this forested land is neither State nor industry-owned, but is owned by approximately 110,000 farmers and other individuals. Members of the Forestry Board and the State Forester were interviewed by the Audit Council concerning the impact of Board termination on this group of landowners. In addition, the Audit Council received letters from foresters and forestry firms, from attorneys, and from State officials, supporting continuation of the Board. Audit Council analysis of some of the possible impacts discussed by the Forestry Board and others follow.

Lack of Protection for Landowners

One of the goals of the Board is to protect private, nonindustrial landowners from incompetent and/or unscrupulous individuals practicing forestry. Through the registration process, practice of the profession is restricted to those meeting qualifications (with several exceptions, see p. 130). It is suggested that through the licensing process, unqualified individuals who may otherwise seriously damage the economic interest of the small, private landowner are "weeded out" and prevented from practicing.

According to a Forestry Commission official, most of the approximately 110,000 private, nonindustrial landowners are not in the farming or forestry business, but work in other fields. They would not, therefore, have the expertise to assess the value of their timber, and without the registration process, may not be able to identify a competent forester. Professional management advice is necessary, according to this official,

because unlike other agricultural products such as soybeans or wheat, timber cannot be measured in standard units. Rather, it is sold as standing timber. The value of timber varies considerably based on factors such as type and maturity of trees, accessibility of the timber stand(s) from a road and distance from the manufacturing plant. Finally, 110,000 as the number of private, nonindustrial landowners is an estimate; the landholding public is not static but changes constantly. This factor makes public outreach more difficult, according to this official, and may increase the likelihood that individuals may be taken advantage of.

The following statements have been made by Board members and other interested parties to the Audit Council regarding the approximately 110,000 private, nonindustrial landowners:

Most people don't have the slightest idea of the volume of timber they have, or what it should be used for.

Many timberowners are ignorant about what they have, and need to be protected from unscrupulous individuals who may talk them into selling prematurely, and not maximizing the potential of the land.

Of the 64% (sic) of South Carolina's timberland owned by farmers and other individuals, a significant portion is controlled by owners totally unaware of the values they possess and the marketing and management alternatives available.

As a practicing attorney, I have in the past seen instances in which I felt that persons acting as foresters were taking advantage of poorly informed landowners in timber sales.

However, for the registration process to protect individual landowners from being cheated in a sale, landowners would have to know that the most likely source of an accurate appraisal of timberland is a forester.

The statutes governing registration of foresters do not prevent nonforesters from offering to buy timberland, although they may not offer "forest management advice."

Fourteen states have a greater amount of forested land owned by private, nonindustrial owners than South Carolina, seven of which license foresters (Alabama, Arkansas, Georgia, Michigan, Mississippi, North Carolina and West Virginia.) The Audit Council spoke to representatives of the state forestry departments in the seven states that do not license foresters (Kentucky, Louisiana, Missouri, New York, Pennsylvania, Tennessee and Virginia). Four of the seven state representatives stated that there are no problems of consequence with unscrupulous and/or incompetent individuals practicing forestry in their states, and two reported that the problem in their states was isolated, and minor. The New York representative reported that his agency receives numerous complaints regarding unscrupulous and/or incompetent individuals practicing forestry; however, these complaints have not been recorded. The number of complaints a year received by the forestry agencies in each state could not be compared due to a lack of documentation.

Of the 12 states in the country which license foresters, five are southeastern: Alabama, Georgia, Mississippi, North Carolina and South Carolina. Florida's registration program for foresters was terminated in 1979. According to an official in the Florida Department of Agriculture Forest Management Division, the program was terminated because it could not be shown that the program met a public need. The registration law in Florida primarily benefited those in the forestry consulting business, according to this official, and there have been no serious problems since 1979 due to the lack of registration. In his opinion, "that you

have to be a registered forester to give forestry advice, won't keep people from being ripped off."

Finally, the Board of Registration for Foresters monitors the forestry profession through the complaint process (see p. 147). There has never been a license revoked in the 23 year history of the Board in South Carolina. There are records of formal complaints registered against two foresters. Through the complaint and hearing process, the Board has the power to revoke a forester's license to practice. This is the only sanction the Board may take against a forester. Whether or not the Board is involved, a complainant must individually seek legal redress through the court system in order to recover damages, as in any other legal dispute of this kind. The Board, through its legal representative from the State Attorney General's Office, does not represent individual complainants, but rather, represents "the public interest."

Inability to Identify Competent Foresters

Licensure of foresters is reportedly a service to landowners, by helping them identify competent individuals. It is argued that in the absence of the Forestry Board, landowners would experience difficulty in identifying competent foresters.

In its review of states and the federal government, the Council has found that a B.S. in Forestry is the "common denominator" for qualification as a forester. The U.S. Forest Service requires a minimum of a four-year Forestry degree (or the equivalent) for employment as a forester; licensure does not enter into hiring or promotion decisions. Foresters are licensed in 12 states; all require a B.S. in Forestry (or the equivalent) and most require related work experience and/or

passage of an exam, (see Table 1, p. 133). In addition, professional membership in the Society of American Foresters (S.A.F.) requires a B.S. in Forestry (or a bachelor's degree in a closely related field, plus three years of forestry experience). As of April 1984, 481 South Carolinians were professional members of the S.A.F., 38 were retired professional members and five were "fellows," (outstanding professionals).

In six of the seven states surveyed with more private nonindustrial timberland than South Carolina, and which do not license foresters, lists of consulting foresters are maintained by the state forestry agency. Lists are then provided to the public upon request. The state which does not maintain a list recommends to private landowners that foresters they hire be members of the Society of American Foresters. In four of the six states, consulting foresters must have a four-year degree in forestry in order to be included on the list. One state does not screen foresters for inclusion on its list, due to the very few number of consulting foresters in the state. Lastly, the state forestry agency in Louisiana maintains two lists. The first lists all individuals practicing forestry in the state, the degree each holds (if applicable) and from which school and year, their job title and place of employment, and other information determined useful to the public. The second list presents consulting foresters and firms, by region of the state. The Office of Forestry excludes any firm with connections to the timber buying business, such as a woodyard or logging company.

The Florida Division of Forestry has maintained a list of consulting foresters since termination of the registration program in 1979. Foresters with a B.S. in Forestry and one year of experience are included on the list. These criteria were based on minimum qualifications of foresters who work for the State of Florida.

The New York Forestry Commission is developing a brochure for private landowners, titled "How to Select a Consultant." This brochure will review bidding procedures, services offered by professional foresters and appropriate questions to ask of consultants, including provision of references and qualifications. Such a brochure may be useful in South Carolina, given the lack of knowledge on the part of landowners described by Board members and others above.

Termination May Slow Advancement of Good Management Practices

Another goal of the Forestry Board is protection of the public through promotion of good forest management practices. Timber and wood-related products represent South Carolina's third leading industry, and its importance to the State is projected to increase. A 1982 Council of State Governments Report on Forest Resource Management stated:

...demand for round timber is expected to double between 1977 and 2000. Over this same period industrial growth is expected to shift from the West to the South.

Also discussed in the report is the effect of inadequate forest management practices.

...in some areas of the South, namely the south central, scarcity of sawtimber size pine is already evident. Lack of regeneration of privately owned harvested lands is a problem... Only one in seven acres...is being prepared for artificial regeneration. Improper site preparation often leads to stands of low value...

According to a member of the Forestry Board, timber harvested at maturity for sawtimber can be worth 400% more than if harvested for pulpwood, prior to maturity. Thus, poor management practices can have a serious negative impact on both the landowner and the State.

The impact of termination of the Forestry Board on the promotion of good forestry management practices in the State is difficult to estimate. The Board has not undertaken specific promotional activities, but has plans for development of a poster. In the absence of the Forestry Board, there would continue to be State and federal programs available which support the same goal as that of the Board, promotion of good forestry management practices.

Professional foresters employed by the State Forestry Commission provide up to five days of assistance a year to any landowner in the State, including forest management advice and written forest management plans. Once plans are written, landowners may then be referred to consulting foresters to assist in carrying out management recommendations. From 1941 to 1982, nearly 66,000 woodland examinations were performed by Commission foresters; 2,641 were performed in FY 82-83. Timber marking services are also available on a more limited basis, and for a fee, by the Commission.

The Commission's Forest Renewal Program provides financial cost sharing assistance to private woodland owners for reforestation. The Commission also operates tree nurseries for the production of seedlings for State landowners; nearly 48 million seedlings were distributed during the FY 82-83 planting season. The Federal Forestry Incentive Program (FIP) and Agricultural Conservation Program (ACP) provide up to 65% reimbursement to carry out approved forestry practices for reforestation or forest improvement practices. Since 1974, over \$9 million has been allocated to South Carolina landowners under FIP. Other services offered by the Commission for a fee include firebreak plowing, prescribed burning, and equipment rental.

Conclusion

The Audit Council has been unable to identify a concrete link between the Board of Registration for Foresters, good forestry practices in the State, and a lack of unscrupulous or incompetent individuals practicing forestry.

RECOMMENDATION

IN ACCORDANCE WITH ACT 608 OF 1978, THE
GENERAL ASSEMBLY SHOULD CONSIDER TERMINATING
THE BOARD OF REGISTRATION FOR FORESTERS.

- (3) DETERMINE THE OVERALL COST, INCLUDING MANPOWER, OF
THE AGENCY UNDER REVIEW.

In FY 82-83, the Board of Registration for Foresters collected \$5,720 in fees, and spent \$4,094. A detailed analysis of sources and uses of funds for the five-year period ending June 30, 1984 is presented in Appendix 1. The Board generates revenues through application, registration and renewal fees. The initial registration fee is \$15, and yearly renewal is \$8. Revenues exceeded Board expenditures by an average of \$2,129 for the period FY 79-80 through FY 82-83.

The Forestry Commission's Executive Assistant serves as Board Secretary, and administers the functions of the Board. He stated that he contributes his own time to the Board. Part-time secretarial help handles correspondence, license and renewal

applications, budgetary matters and scheduling of Board meetings and examinations, in assistance to the Board Secretary. The Forestry Commission provides a corner of an office to the Board, as well as a typewriter, several file cabinets and a desk.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council reviewed the Board's operations, and has noted two problems which may affect its efficiency. The Board has not formalized a policies and procedures manual. Also, a requirement for continuing education, or other assessment of continued competence, should be considered if the Board is reestablished.

Formal Policies and Procedures Needed

If reestablished, the Board of Registration for Foresters should formalize a manual containing Board policies and procedural guidelines. The Board's by-laws contain written statements of policy regarding Board composition, duties and meetings, definitions of forestry experience, applicant qualifications, and eligibility for examinations. Examples of Board policies or procedures which should be included are those concerning examination administration, reporting and handling procedures between the Clemson School of Forestry and the Board, and complaint administration and investigation. The Board should also develop statements of goals and should define related objectives.

A policies and procedures manual helps ensure consistency in decision making. Clear identification of goals and related objectives contributes to organizational effectiveness.

RECOMMENDATION

IF THE FORESTRY BOARD IS REESTABLISHED, A
POLICIES AND PROCEDURES MANUAL SHOULD BE
FORMALIZED.

Continuing Education Requirement Should Be Considered

The Audit Council estimates that over 40% of current licensees were initially licensed prior to 1970, based on a sample survey of 65 registrant files, or approximately 10% of registered foresters. Once an applicant is granted licensure, his license is renewed yearly upon payment of the \$8 renewal fee. If the Board is reestablished, a continuing education requirement could help assure the public that licensees have kept abreast of developments and can still provide high-quality services.

A Forestry Commission official stated to the Audit Council that the forestry field is constantly changing; foresters must be familiar with new techniques and technologies relating to timber processing in order to accurately recognize current timber value. The 1978 Council of State Governments publication on occupational licensing states: "Once granted, a credential should remain valid only for that period during which the holder can provide evidence of continued competency."

RECOMMENDATION

IF THE FORESTRY BOARD IS REESTABLISHED, A REQUIREMENT FOR CONTINUING EDUCATION OR OTHER ASSESSMENT OF CONTINUED COMPETENCE SHOULD BE CONSIDERED.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC, AND IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Board of Registration for Foresters is comprised of five members, representing the major forestry employment interests in South Carolina: The S.C. Forestry Commission, the U.S. Forest Service, the Clemson University School of Forestry, consulting forestry, and industrial forestry. The composition of the Board, then, reflects the "industry it regulates." However, there are no public members on the Board, and since April 1981, no members of the public have attended Board meetings.

More Public Input Needed

Although Board meetings are open to the public, there has been no public participation. The Board meets twice a year; a review of Board minutes from April 1981 through September 1983 showed that on only one occasion did anyone other than Board members or staff attend. An applicant for membership attended the April 1983 meeting, regarding his examination. As discussed above, there are no public members on the Board.

The Board posts notice of its meeting at the Forestry Commission. Licensees are not routinely notified, and notice is not placed with any type of advertising media. The Board is not listed in the public telephone directory.

The purpose of the Board is to protect the public. The public, therefore, should be involved in the regulatory process. The Council of State Governments 1978 report on Occupational Licensing recommends at least two public members serve on regulatory boards.

RECOMMENDATIONS

IF THE BOARD IS REESTABLISHED, SECTION
48-27-20 SHOULD BE AMENDED TO INCLUDE AT
LEAST TWO PUBLIC MEMBERS ON THE BOARD.

THE BOARD SHOULD LIST ITS TELEPHONE NUMBER
IN THE PUBLIC TELEPHONE DIRECTORY AND
SHOULD CONSIDER PUBLIC ADVERTISEMENT OF
MEETINGS.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES
THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY
ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Board of Registration for Foresters does not directly duplicate the services or programs administered by any other State, federal or other agency. One of the Board's goals is protection

of private landowners through promotion of good forestry practices. The South Carolina Forestry Commission (separate from the Forestry Board) promotes this goal through a variety of programs which assist the private landowner in the State. These programs are discussed on page 141.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATIONS AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

Complaint Handling Inadequate

The Audit Council reviewed the complaint file maintained by the Board of Registration for Foresters, and found that (1) documentation was incomplete, (2) response to some complainants and subjects was inadequate, and (3) Board response time was lengthy. Each of these problems is discussed below.

The file contained complaints and related documentation dated between March 1969 and April 1984. Formal complaints have been registered against two foresters. In the first case, a hearing was held in 1983, and the Board found that disciplinary action was not warranted. In the second case, a hearing is scheduled for August 1984; (a preliminary hearing was held in May 1984.) In addition to formal complaints, six alleged registration violations were reported. The file also contained one inquiry from an attorney, and an allegation regarding a registration applicant by a reference.

(1) Incomplete documentation: The file contained no documentation, or report of outcome, regarding the 1983 hearing held by the Board. Two of the reported registration violations responded to by the Board were not in the complaint file, and the outcome of three reported registration violations could not be determined.

(2) Inadequate Board response: One of the six reported registration violations was not investigated, or acted on, by the Board, and no record of Board contact with complainants was filed for three registration reports.

(3) Lengthy response time: Three separate complaints in 1983 and 1984 regarding a single forester were received by the Board over a seven month period, before a preliminary hearing was held in May 1984. The Audit Council ascertained that the complainant in the only previous hearing (1983) was notified of the Board's decision approximately three months after the hearing. In another case, the Board took four months to respond to an inquiry from an attorney. Finally, an allegation was made against a registration applicant by one of the applicant's references. Although the Board investigated the charge, the applicant was not apprised of the allegation for five months. When finally notified, the applicant provided an explanation within five days, and then, upon Board request, evidence indicating that the matter was not a problem.

The Board Secretary indicated that the Board had lacked sufficient clerical help and that the secretarial problem has since been corrected. In addition, the Board has not established policies and procedures for handling complaints, nor has it maintained a central log.

Section 48-27-200 of the South Carolina Code of Laws authorizes the Board to revoke the license of any registrant found guilty of gross

negligence, incompetence, or misconduct in the practice of forestry.

The Board is empowered to investigate written and sworn charges which are filed with the Board Secretary. The Board must hear such charges within three months of the date preferred, unless dismissed as trivial or unfounded.

The Board's goal of offering protection to the public cannot be achieved without an effective complaint process. If the Board is reestablished, complete records should be maintained and the Board should function responsively. Board procedures should include immediate notification of the complaint to the subject of the complaint, and the individual should be afforded a reasonable opportunity to respond.

RECOMMENDATIONS

IF THE FORESTRY BOARD IS REESTABLISHED, A
DETAILED COMPLAINT LOG SHOULD BE MAINTAINED
FOR DOCUMENTING CASE PROGRESS AND RESOLUTION.

POLICIES AND PROCEDURES FOR HANDLING COMPLAINTS
SHOULD BE ESTABLISHED BY THE BOARD.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW
HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND
LOCAL STATUTES AND REGULATIONS.

The Council has identified two instances in which the Board is not or has not been, in compliance with Section 48-27-10 et.seq. of the South Carolina Code of Laws pertaining to the Registration of Foresters.

The Board has not complied with Section 48-27-200, which requires that "All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been preferred" (see p. 148).

Section 48-27-220 requires the Board secretary to prepare and distribute a roster of all registered foresters each July. Such a roster was prepared and distributed in September 1980, but was not prepared and distributed again until May 1984. Thus, the Board was not in compliance with Section 48-27-220 for the years 1981, 1982 and 1983.

APPENDICES

APPENDIX 1
BOARD OF REGISTRATION FOR FORESTERS
STATEMENT OF REVENUES AND EXPENDITURES

	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u> <u>(Estimated)</u> ¹
<u>Revenues</u>					
Application Fees	\$ 430	\$ 440	\$ 660	\$ 450	\$ 380
Registration Fees	220	305	120	350	235
License Renewal Fees	<u>4,264</u>	<u>4,497</u>	<u>4,756</u>	<u>4,920</u>	<u>5,329</u>
TOTAL	<u>\$4,914</u>	<u>\$5,242</u>	<u>\$5,536</u>	<u>\$5,720</u>	<u>\$5,944</u>
<u>Expenditures</u>					
Personal Service and Per Diem	\$1,669	\$1,950	\$2,092	\$1,112	\$ 105 ²
Contractual Service	23	31	120	1,529	3,594 ²
Supplies and Printing	252	623	683	787	776
Fixed Charges and Contributions	20	-	60	30	30
Travel	125	207	187	518	138
Employer Contributions	<u>180</u>	<u>301</u>	<u>280</u>	<u>118</u>	
TOTAL	<u>\$2,269</u>	<u>\$3,112</u>	<u>\$3,422</u>	<u>\$4,094</u>	<u>\$4,643</u>
<u>State Appropriation</u>	<u>\$4,325</u>	<u>\$4,347</u>	<u>\$4,440</u>	<u>\$4,618</u>	<u>\$4,643</u>

¹FY 83-84 revenues and expenditures were estimated by the Secretary of the Board of Registration for Foresters.

²In FY 82-83, the Board began contracting for a part-time secretarial position, causing the decrease shown in Personal Service and the increase in Contractual Service.

Sources: Budget and Control Board Documents, State Appropriation Act, State Auditor Management Letter 6/30/82 and 6/30/83, Occupational and Professional Licensing Board Annual Reports and Board of Registration for Foresters.



STATE BOARD OF REGISTRATION FOR FORESTERS

P. O. BOX 21707
COLUMBIA, S. C. 29221

August 1, 1984

Dr. Marilyn Edelhoch
Legislative Audit Council
602 Bankers Trust Towers
Columbia, S. C. 29201

Re: Draft of Audit Council Report on
Board of Registration for Foresters

Dear Dr. Edelhoch:

The following comments are respectfully submitted on the above mentioned Draft which was reviewed by Mr. S. Leigh Wilson and me on July 6, 1984. Later I reviewed the Draft alone and then in the presence of Mr. Richard Wilson. Your explanation of the intent of some of the statements in the Draft was helpful.

On page 134, reference to the Board and regulation of fees seems to be correct. The Board does not regulate fees charged by licensees for their services, nor does it intend to do so. Such action would probably be in violation of the federal anti-trust laws designed to promote free enterprise. Fees charged for registration and renewals are low, therefore, no direct influence is exerted on consumer prices. The economic impact of keeping unqualified and unethical persons from practicing cannot be accurately estimated, yet the positive influence on the welfare of the state's citizens and their environment would be expected to be significant.

Continuing on page 134, documenting of evidence regarding the impairment of the economic well being of private, non-industrial forest landowners is indeed, difficult. However, the conclusion that there is a lack of evidence to support the argument that landowners are economically disadvantaged is refuted by the 1984 case and others where practices by unscrupulous and unqualified persons have been stopped.

The law is not limited to the protection of private landowners but also protects the general public and the environment. Foresters are qualified and professionally obligated to develop the forest and protect it from fire, insects, and diseases, therefore increasing the production of multiple forest products; to aid in the building of soil, and protecting it from erosion; to prevent water pollution by silt and chemical run off; provide quality habitat for wildlife and enhance outdoor recreational opportunity as well as natural beauty. The entire population benefits from good forest management.

Page 136, last paragraph - Most people know that a forester is the most likely source of accurate appraisal of timber and timberland, yet, to provide the best

assurance that they are hiring a qualified and ethical forester, registration is needed.

Anyone can buy timberland, whether a forester or non forester.

Page 137- A license is required in order to practice forestry in South Carolina so that those who would prey upon the public may be restrained from continuing to hold themselves out as responsible professionals. It is a protection afforded the public by the legislature which is in addition to individual legal remedies available through the courts.

Licensing gives protectors of the public interest an opportunity to require a professional review, and, if appropriate, to invalidate the license, therefore preventing a continued practice.

On page 137 and in other portions, the discussions should not be limited to private non industrial landowners. The law limits those persons who can legally hold themselves out to practice forestry whether on private, public or industrial land. Many consulting foresters practice on all three categories of land holdings.

Continuing on page 137 - It is stated that four of seven state agency representatives said there were no problems in their state caused by the lack of a registration law. If true, this indicates the high integrity of foresters in their profession. It is suggested, though, that they are just not aware of the problems that are there. On what basis did they come to those conclusions? New York reports many complaints but keep no records. How, then, do they know whether the complaints are significant?

There is benefit in being registered for the consulting forester who is qualified and ethical. Registration tends to eliminate those who do not possess these qualities. Recipients of forest services and the general public receive the most benefits, though.

The licensing of any professional does not keep the professional's clients from being "ripped off". Registration only provides a way to prevent it from continuing if the clients will avail themselves of the laws protection. The Board is now enforcing the law in a way to increase its effectiveness and have greater influence in this area.

On page 138, paragraph 1, sentence 2 is true but the Board has been taking steps to change this situation through educating the licensees and the public about proper procedures for filing complaints. This has resulted in one hearing a few months ago and another one which was planned for August. The first hearing did not result in the revocation of the defendant's license because the evidence did not warrant revocation. The one planned for August resulted in the defendants giving up his license through non-payment of dues rather than facing the hearing.

Admonitions have gone out to others who were unqualified and unregistered to stop advertising themselves as foresters and to refrain from doing forestry work unless or until they became registered.

Referring to pages 138 and 139, it is not clear how relevant to licensing this discussion of professional employment or membership is. The voluntary Society of American Foresters does not license or otherwise control the practice of forestry, once the forester has obtained his degree. Neither do state or federal forestry agencies determine the qualifications or moral standards of foresters, other than those they hire. Registration Boards do. The S. C. law also allows those without sufficient formal education to take the examination and be registered, if proven qualified and of good moral principles.

Other states, as you have pointed out, handle the listing of consultants and information on how to select a consultant in a different way than South Carolina does. A listing of "Registered Consulting Foresters Operating in South Carolina" has been developed in cooperation with Forestry Extension at Clemson University and a brochure on "How to Select a Consulting Forester" is being considered by the Board. This "How To" brochure and a promotional poster were already being given serious consideration by the Board prior to this review.

Page 141, paragraph 1 - In the absence of the Board, state and federal agencies would foster some goals, but without power to determine qualifications and enforce adherence to professional standards of conduct by those not employed by the agencies there could be no effective control. The Board, through the present law has authority to require standards of performance and ethics. No other entity of state or federal government in S. C. has this authority.

Page 141, paragraphs 1, 2, and 3 - Forestry Commission programs are separate and distinct from the Board of Registration for Foresters. Both are trying to achieve similar goals but these efforts are through different methods as prescribed by the legislature.

Page 142, conclusion - There are unscrupulous or incompetent individuals in the forestry profession despite the Boards efforts. The Board continues to respond to any proper complaint concerning such persons. The law affords a mechanism to prevent unlicensed persons from practicing or continuing to practice. The "concrete link" can be found in court injunctions and the letters to individuals requesting that they not practice forestry unless, and until they are registered to do so.

Page 143 and 144 - Although the bylaws of the Board govern procedures, this needs to be extended into a policy manual to guide the operation of the Board. If allowed to continue, the Board will promptly proceed with the development of such a manual.

Page 144- The Board has considered and continues to consider continuing education. This would need to be in conjunction with Clemson University's Department of Forestry. Additional funds will be needed if this is to be accomplished.

The goal should be to work toward a well rounded educational program for the future.

Page 145- "More Public Input Needed." Unless the Board is restricted from doing so, one or two members of the Board should come from the ranks of private non-industrial forest landowners and the general public.

Page 145 and 146- Neither Clemson University's Department of Forestry, the Forestry Commission nor the United States Forest Service can very well be considered "the industry that it (the Board) regulates". They are governmental entities. Yet this does not alter the fact public membership is needed on the Board.

The applicants for registration are notified when the meeting in which their application will be considered is being held. Those who are to take the examination are notified when it is to be held, of course. More ways of publicizing the meeting dates, time, and place are being considered.

The Board's telephone number is listed in the Legislative Manual, although the number is wrong in the latest copy. The S. C. State Telephone Directory has the Board listed correctly, and arrangements will be made to have the number listed in the public telephone directory.

Page 148, top of page, (1) Incomplete Documentation - The Board Secretary was not aware that the report of outcome regarding the 1983 hearing was not in the complaint folder. Instructions were given for them to be placed there. This will be done.

Complaints that were not in the correct form and that we could not secure in correct form were not acted on by the Board. Law gives explicit directions as to how form is to be filed.

Page 148, (3) Lengthy response time - Disagree with the assertion that the Board failed to hear charges in the specified three month period in the 1984 case. The sworn statement was received on February 7, 1984 and the hearing was set for May 7, 1984, within the specified period. This was postponed at the defendant's request.

The allegation was made known to the registration applicant shortly following the first Board meeting after it was received. It was held for discussion with Board members until that time.

It is not agreed that, in all cases, the subject of the complaint should be notified immediately after the complaint is received. There is no need to hassle the forester until it is found out there is a problem. Also some are prone to hamper investigation by tampering with witnesses or destroying evidence.

They are, in all cases, given the opportunity to respond prior to the hearing and are entitled to full cross examination and reply at hearing, if hearing is needed.

Page 150, paragraph 1 - More time is needed to dispose of cases after charges have been preferred. No time limit should be imposed in the law. Reasonable time is necessary to investigate and prepare the case prior to institution of charges. Available resources and the complexity of the issues will determine the time needed. Also, provisions should be made for extension of time to dispose of cases under extenuating circumstances.

Page 150, paragraph 2 - This will be remedied.

You started this audit with very little knowledge of forests and forestry work, in accordance with your statement. You made a very sincere effort to acquire information and made significant progress during the short time you worked with us. Yet time was not sufficient to acquire anything more than superficial knowledge. It is doubtful that others of the Council have better understanding of the profession than you do. This is no fault of yours or theirs, just a fact that is true of most professions unless an individual has spent a significant amount of time studying and practicing.

We can only wish that you, and we, could spend the time needed to help you understand the tremendous impact of forests and forestry on our state, the complexity involved in the practice of forestry and the vulnerability of many landowners and the environment to unqualified and unscrupulous individuals operating as responsible professionals.

Conclusion: There is room for much improvement in the Board's operation. Through continuing those functions that have already been undertaken by the Board, correcting the weaknesses that have been pointed out by this audit and through the guidance of the Governors Conferences on the operations of Licensing Boards, these improvements can and will be made, if the Board is allowed to continue.

Sincerely Yours,

Claude F. Barden
CLAUDE F. BARDEN
Board Secretary

CFB:jc